SUBSIDIZED EXPORT FINANCING

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

TO DISCUSS THE RECENT COMPETITION FOR THE SALE OF SUBWAY CARS TO THE NEW YORK METROPOLITAN TRANSIT AUTHORITY, AND RELATED MATTERS

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THURSDAY, JULY 22, 1982

U.S. SENATE, COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,

Washington, D.C.

The subcommittee met, at 1:40 p.m., in room 5302 of the Dirksen Senate Office Building, Senator John Heinz, chairman of the subcommittee presiding.

Present: Senators Heinz, Riegle, and Proxmire.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Today the Subcommittee on International Finance of the Banking Committee will be looking at the recent decision by the Treasury Secretary, Donald Regan, not to extend section 1912 Eximbank support to the Budd Co. in the New York City subway car competition.

We will be looking at that decision from three perspectives. First, what were the reasons behind the Secretary's decision? Was the decision justified given the facts and the law?

Second, what are the legal remedies still open to the Budd Co. and to our own Government in dealing with this case of foreign subsidized export credit in our own domestic marketplace? What is the progress of the GATT consultations? What is the status and propriety of the countervailing duty provisions in the 301 cases? Is new legislation necessary? Do current laws need refinement?

And, third and finally, what are the implications of the Bombardier success, using subsidized credit, for the future of mass transit and, indeed, industrial policy in the United States?

The reason, in my mind, behind the July 13 decision by the Treasury Secretary, Mr. Regan, is puzzling. It argues, in effect, that the U.S. Government's hands are tied with regard to offering Eximbank support for the Budd Co., because the U.S. competition was judged inferior on all seven criteria of evaluation.

Now, I have studied that report which accompanied the decision, and I must admit I have a very strong suspicion that the Treasury Department has put its thumb on the scales in favor of the Canadian supplier. Two of the most critical factors, the cost and the availability of financing, clearly would be offset by an Eximbank decision to match the Canadian offer. So I cannot see how they could be counted in Canada's favor.

Of the remaining five factors cited in the decision, three deal with the quality, price, and delivery schedules of the American and Canadian competitors. Now, it is frankly difficult for me as a U.S.

Senator to believe that an American executive department or agency did the analysis which accompanied the report.

The benefit of the doubt is consistently given to the Canadian bidder with regard to technological superiority, quality and reliability of workers, and quality and reliability of management, even though the Budd Co. has built 11,000 railway cars of stainless steel over the past 50 years and Bombardier has yet to build a single one. I thought for a while I was reading a brochure by the Canadian Chamber of Commerce.

Finally, leaving aside the New York State content requirement, which is arguable, it is hard to understand why the MTA allowed Budd to bid on the contract in the first place if they were afraid of overdependence on one supplier.

As you might have guessed, I have serious doubts about the reasoning behind the Treasury decision to recommend against Eximbank support for Budd. As I see it, Secretary Regan denied Eximbank support for Budd because it was clear that such support was needed. Hopefully, this hearing will give the Treasury a better opportunity to present a more convincing case—the one they have presented is as full of holes as Swiss cheese—for their decision.

That point aside, I am deeply concerned that the denial of Eximbank support in this case establishes a dangerous precedent for other cases and for our competitors to encourage them to ignore the international arrangement on officially subsidized export credits. It presents the spectacle of the U.S. Government acquiescing to such an incursion into our own domestic markets.

I am concerned that it will now be much more difficult for American negotiators to denounce the evils of predatory export credits when we ourselves are unwilling to defend one of our own industries against such a sale in our own home market, one that was clearly in violation of the export credit arrangement.

By the way, on that point there is just no contest. There is nobody who has argued that the sale, that financing, did not violate the arrangement.

I would point out that the U.S. domestic market is the richest and most inviting market in the world. If it is to be left unprotected by our fair trade laws, how long would it take for our other major trade competitors to realize the advantage that they could gain through subsidy, particularly at a time of worldwide recession? Our trade competitors will jump. Indeed, they are jumping, as evidenced by the situation in the steel industry, with all the Europeans making offer after offer to the USTR and Malcolm Baldrige at the Commerce Department to settle the steel countervailing duty cases out of court, if you will. How long will it take our trade competitors to jump at the chance to export their unemployment to our shores through the vehicle of subsidized export credits and other devices?

What we are discussing in this case is not just the loss of several thousand jobs in Troy, Michigan, and maybe some jobs at Red Lion in Philadelphia. If other large contracts in our country are to be left similarly unprotected, we are talking about the loss of entire industries, not just a few jobs.

I am concerned, therefore, by the implications of this case for our industrial policies, such as we have. Does it mean the U.S. Govern-

ment will be unwilling to defend efficient, productive industries from the incursions of foreign predatory financing in the name of nonintervention in the free market? Will we fail to defend our own efficient industries against the less efficient, who deprive them of lucrative contracts through the device of government-backed financing?

Will such a policy of benign neglect attract new investors to our industries, believing they can operate in an atmosphere free of unfair competition; or, as I think likely, will it drive our most productive industries abroad, out of this country, where they can take advantage of the official financing facilities available and necessary to protect them against the predatory practices of the inefficient?

There is also a moral dimension to this decision. Certainly, it is cheaper to buy a TV set from a fence or mag wheels from midnight auto supplies, but doing so also encourages criminals to steal and makes the buyer a part of that process. The Bombardier price advantage came from the Canadian Government's willingness to offer subsidized export credit in clear violation of international agreements, going beyond both the limitations on interest rate and on term of repayment.

The Treasury Department decision would have the U.S. Government become an accessory to that crime by allowing New York City to take the money and run.

These issues will be examined closely today in the course of the hearing, as we receive testimony from labor, industry, and Government, all of whom have a stake in a wise and efficient trade and industrial policy.

I would like to make it clear what I see at stake in the Treasury decision on the MTA subway competition. The issue is not simply whether we should take advantage of a Canadian Government subsidy. Rather at issue is whether we are able to see the real cost of the Canadian gift in terms of lost employment, rewarding the inefficient, failure to defend America as a good place to do business, and a refusal to uphold the principles upon which a fair and equitable international trading system ought to be based. Those, it seems to me, are the real issues.

Before we call our first witness, who will be Mr. Howard Samuel, I would like to yield to the distinguished ranking member on the committee, Senator Proxmire of Wisconsin.

Senator PROXMIRE. Thank you very much, Mr. Chairman. I have no statement.

Senator HEINZ. Do you have any questions?

Senator PROXMIRE. I certainly do.

Senator HEINZ. Our first witness is Mr. Howard Samuel.

STATEMENT OF HOWARD SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ACCOMPANIED BY BRIAN TURNER, DIRECTOR OF LEGISLATION AND ECONOMIC POLICY

Mr. SAMUEL. Mr. Chairman, my name is Howard Samuel. I am here today on behalf of the 59 national and international unions and their 6 million industrial workers who are affiliates of the Industrial Union Department, AFL-CIO. May I also introduce on my

left Mr. Brian Turner, who is the director of legislation and economic policy for the IUD.

We are particularly concerned with the issue you are addressing here today, subsidizing financing for foreign producers for large contract sales in the U.S. market and the policy and legal responses available to provide for fair competition in the face of such subsidized foreign bids.

The Industrial Union Department, as you know, has filed a section 301 unfair trade practices complaint with the USTR in the case of the New York City subway car contract lost by the Budd Corp. to a subsidized bid by Canada's Bombardier Corp. We have also joined the Budd Co. as copetitioners in the subsidy countervailing duty petition before the Commerce Department and the ITC.

In both these actions the IUD has moved in concert with the United Auto Workers and the United Steelworkers of America, districts 19 and 31, who represent the bulk of the American workers directly affected by the MTA contract.

ILLEGAL SUBSIDIZED FOREIGN BID

I guess the question is: why are these issues important for this committee and for the country as a whole? Thirteen thousand man-years of U.S. employment have been lost to a massively and illegally subsidized foreign bid to build 825 subway cars worth $663 million for an American subway system.

Events over the last 8 weeks among the New York Metropolitan Transit Authority, the U.S. Trade Representative, the Canadian Export Development Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Treasury, and the sole remaining U.S. producers of subway cars, the Budd Corp., and the unions representing workers for Budd and its suppliers have led to one chilling conclusion, a conclusion which many Americans find radically unacceptable.

Present U.S. law is, for all practical purposes, impotent to prevent harm to U.S. producers from unfair trade practices of foreign suppliers in big ticket sales of capital equipment. What this country does, it seems, is to stand by feebly protesting while U.S. producers are pushed below the surface. Then we set in motion mechanisms which may, if things go well, punish the perpetrator after the deed is done.

Last week's refusal by the Treasury Department to use its authority under section 1912 of the Export-Import Bank authorizing legislation to provide equivalent financing for the Budd Corp. to match the 9.7 percent Canadian Government financing for Bombardier of Montreal has eliminated the last chance for American workers and firms to compete on the much vaunted "level playing field" in international economic competition.

The mistakes at issue here go far beyond 13,000 possible lost American jobs and the possibly fatal injury to the struggling U.S. subway car manufacturing industry. The signal given by Treasury's refusal to act could hardly be worse. Our Government is saying now to the rest of the world that subsidized financing, even at 9.7 percent for 15 years, is not considered "likely to be a determining factor" in big ticket contract bidding.

Of course, this determination was made by Treasury, despite MTA having gone on record in New York State court that they would reopen bidding if Budd received financing equivalent to Bombardier. It is hard to imagine a clearer invitation to foreign governments to freely violate international rules on export financing, an invitation which is particularly ironic coming from the same government which has been in the forefront of international negotiations for increased discipline against the use of subsidized export credits.

The need to assure a healthy future for American industry, and therefore for American jobs, is our basic concern. For big ticket capital equipment such as subway cars, but also for commercial aircraft, heavy electrical equipment, telecommunications systems, construction equipment, and more, international trade has become one of the most important determinants of the future of American industry.

In these capital equipment industries, governments have turned to aggressive official export financing through their national counterparts to our Export-Import Bank. Let me make it clear that the IUD is totally opposed to utilizing scarce Government funds to subsidize financing for American industry, including some of our largest multinational corporations; but, in a world where other nations have no such reluctance, the United States has no choice. Either we match the efforts of our trading partners, or our industry falls by the wayside—and with it hundreds of thousands of jobs.

SEEK MORE AGGRESSIVE U.S. NEGOTIATING POSTURE

The Industrial Union Department, along with 10 major industrial unions and an equal number of major U.S. corporations, have formed the Labor-Industry Coalition for International Trade, which has actively sought a more aggressive U.S. negotiating posture in the OECD arrangement on export credits. We have urged the United States to seek and obtain the elimination of any government financing for exports at below market rates.

We believe that U.S. industry and U.S. workers can compete successfully in the international market in these product lines without the aid of credit subsidies, but American capital equipment industries cannot compete successfully against export credit subsidies offered by other countries when equivalent support is not available from the U.S. Eximbank or through other U.S. Government channels.

While we have sought a much stronger U.S. negotiating posture in the OECD arrangement, we have also supported a strong U.S. Export-Import Bank to maintain that "level playing field" for U.S. exporters in the face of subsidized credit for foreign producers. This goal is being met weakly at best, with the Export-Import Bank providing the majority of its loans at well above the floors negotiated in the relatively weak OECD instrument.

Nevertheless, at least with adequate funding, the United States should be able to compete on an equal basis in third markets. The most glaring weakness of the present system, however, occurs when U.S. producers have to compete in our own market against foreign subsidized export credits. The law was improved slightly, at

least theoretically, during the last Eximbank reauthorization through the inclusion of section 1912, which allows the Secretary of the Treasury to authorize the Bank to finance domestic bidders with funding matching the terms of subsidized foreign government financing which violates the OECD arrangement. Section 1912 provides the only avenue at present for U.S. producers to compete on equal terms with foreign producers benefiting from subsidized export credits, but section 1912 is extremely limited in value.

First, it is reactive and retroactive. It comes into use only after a foreign producer has been awarded a contract.

Second, as we have seen in the current case, it is discretionary on the part of the Treasury Department.

Third, a negative determination by the Secretary of the Treasury, as in this case, based on a finding that illegal foreign export credit subsidies were not "likely to be a determining factor," can prejudice the resolution of the case in countervailing duty investigations or in GATT negotiations.

All of these weaknesses have been manifest in the Budd-Bombardier competition for New York's 825 subway cars.

Without the effective and automatic implementation of section 1912 we are left only with complaints of predatory trade actions under section 301 of the Trade Act, or countervailing duty actions in the case of export subsidies where injury is established.

Both kinds of action require months of investigation and adjudication; and at best, both might result in the offender being found guilty and punished, but that is a hollow victory for domestic manufacturers like Budd and its suppliers and workers.

The jobs are lost forever, and ultimately, American industries which have to compete on an unequal basis with subsidized foreign export credit financing may themselves be lost.

It is an urgent policy question whether we can afford to allow the loss of major contracts when the cause of the loss is the unfair advantage of subsdizied foreign government financing.

We strongly support the legislation introduced last week in the Senate by Senators Riegle and Levin; and in the House of Representatives by Representative James Blanchard and others (H.R. 6760).

These bills would make matching financing in the face of the legally subsidized foreign bids mandatory for the U.S. Export-Import Bank, thus establishing the "level playing field" at the subsidized level.

MATCHING FOREIGN SUBSIDIES

We wonder, however, whether matching foreign subsidies in our own market is the only solution or the best solution to this problem. One difficulty here is that the subsidies which can be met under section 1912 authority and the new bills are only those which violated the OECD arrangement on export credits.

In the first half of this year, the arrangement allowed financing at 11.25 percent for exports to developed countries. Long-term market rates at that time were 15 percent or more.

If the Canadian Government has offered to finance Bombardier at 11.25 percent consistent with the OECD rates while Budd could

expect to do no better than 15 percent for 15 years, Budd would still have had to overcome a difference in financing worth over $100 million on a contract valued at $665 million. Matching 9.7 percent for 15 years would cost $352 million more than providing market financing at 15 percent.

It is understood around the executive branch that these sums were somewhat daunting in the recent considerations of whether or not to apply matching financing for Budd under section 1912. An alternative which would avoid some of these disadvantages of reactivity, delay, uncertainty and cost would be to go directly to the issue by preventing unfairly financed foreign bids from winning the U.S. contracts away from U.S. bidders in the first place.

The direct route to that goal would be simply to borrow below-market financing for bids on U.S. contracts where there is a competing U.S. bidder.

Such a provision of law would establish the "level playing field" from the outset, while at the same time sending a needed signal to our trading partners on the need to control subsidized export credits in international trade.

In terms of the GATT subsidies code, such legislation could define the loss of a big ticket single sale contract to a subsidized foreign producer as a prima facie but rebuttable case of material injury to the domestic producer and workers.

The key here is to find the means of preventing damage to U.S. industries as a result of subsidized foreign government financing of sales in the U.S. market.

The ultimate resolution of this problem in this market and the international market may be found with a meaningful OECD arrangment of export credit which will bar all subsidized financing for export sales, thus restoring competition for capital equipment exports and domestic sales to a determination based on quality of product, delivery time, and price.

The loss of U.S. production and jobs on any other basis will continue to be unacceptable to American workers.

Thank you, Mr. Chairman.

Senator HEINZ. Mr. Samuel, we want to thank you for an excellent statement. I have a few questions.

SUBSIDIZED FINANCING BELOW-MARKET LEVELS CAUSE INJURY

Let me ask you this: Section 301 of the Trade Act, the countervailing duty provisions and the like, are methods of relief that can be obtained only after the fact, as we are all well aware, after injury has already taken place, been investigated and proven.

Do you have any ideas of what could be done to prevent injury, deal with the case before it happened, or at least before the contracts are signed?

Mr. SAMUEL. My suggestion, Senator, would be that there be a revision of section 1912, as I suggested, which would prevent the consideration of a bid in the first place where there is a U.S. domestic competitor.

Senator HEINZ. Would it be your intention, though, that there would have to be a demonstration of injury?

Mr. SAMUEL. I think it would be assumed that any bid that was accompanied by below-market financing rates would be assumed to be injurious.

Senator HEINZ. You wouldn't establish that simply as a matter of assumption—a law?

Do you think that would be a problem, to assume that any contract, not won because of financing, without ever having to show injury, possibly would cause any GATT gap type of problems on our part?

I think in a number of fora, including the leadership the Government is providing to try to bring some sense of discipline to international financing and subsidized credits, it is our assumption—and I think a legislature can make this asusmption—that subsidized financing below-market levels causes injury. It is a factor that would cause injury to a U.S. competitor which did not have access to that financing.

The reason for the question is, I think you and I can imagine a hypothetical example where any time a bid came in from an almost sole world source for something, that it would always be in the interest of somebody in this country to put in a bid, if you never have to prove injury—if you weren't even in the business, you'd put in a bid, and as I understand the provision that you're suggesting, if there is a competing bid of any kind, it would not be subject to in fact an injury test.

The reason there is an injury test in the countervailing duty antidumping statutes is to try and preclude this kind of rather fallacious claim on the part of the petitioner.

Mr. SAMUEL. You're suggesting that there has to be some way of establishing the legitimacy of the U.S. competing bid, and I think you're quite correct. There would have to be some way to do that.

Senator HEINZ. Turning to the situation at hand in the MTA case, what impact do you think the case will have on the international arrangement on export credits.

Do you see this case as undercutting the efforts that Senator Proxmire and I and other members of this committee have been making for as long as I've been involved with the issue to get first the Carter administration and now this administration to get serious and get an arrangment that totally eliminates subsidies by all parties concerned—the Eximbank and all the other equivalents thereof in the other countries.

Do you see this case as undercutting those efforts?

Mr. SAMUEL. Yes, I do, Senator. It seems clear to me, although I'm not a longtime student of international trade matters, as you well know.

Every time the world seems to try to close up holes in the dam—irregular practices, illegal practices, disruptive practices, predatory practices in international trade—some country seems to figure out another way to get around it and open up another hole; and this seems to me to be exactly that kind of situation.

The U.S. Government, with the help of the leadership in this Administration, has made an effort to bring discipline—some sort of international discipline—and yet here another hole has been opened up in the dam which could be particularly disruptive for us.

We are unable to remedy this situation particularly because they are single-shot purchases, and once they're done, that's it totally.

Senator HEINZ. As head of the Industrial Union Division, you represent the workers in a wide variety of different types of industries, thousands of different kinds of firms.

Many of those firms could at some point in the future encounter the same kind of situation. We hope they don't, but the chances are they will. Given the experience in this case of the Budd Co., using section 1912, after they asked for relief under that section, do you think it's at all likely that any companies encountering this type of situation in the future would ever think of bothering to hire the lawyers and fill out the forms and make the arguments, file the petitions and do all the other things you have to do in order to get relief under this section?

Mr. SAMUEL. I'm sure, Senator, that many particularly medium-sized and small companies do not feel they have the resources to dedicate to that kind of a search, and you're right.

Senator HEINZ. I would regrettably agree with you.

Mr. SAMUEL. Only the very largest and resourceful firms would be able to take advantage of it.

ELIMINATION OF EXPORT CREDITS TO DEVELOPED NATIONS

Senator HEINZ. One idea that's been discussed in the OECD credit talks—nothing has come of it yet, but it's not totally far-fetched since they have discussed it—is the elimination altogether of official export credits among and to the developed nations, the OECD nations.

By the way, that would include credits to the Soviet Union which is clearly a developed nation, even though it doesn't actually pay its membership dues in the OECD exactly.

It would include cases such as this today. How important do you think such a provision would be, and should it be the object of major efforts in our next round of negotiations on export credits?

Mr. SAMUEL. Yes, Senator. As I tried to make clear in my testimony, the labor movement generally and certainly the Industrial Union Department—we really are not in favor of devoting scarce budget resources to subsidizing large or small multinational corporations. We think there are a lot of other uses for our Federal tax resources, and the only reason we support a healthy and viable Eximbank at this time is because we are in a competitive field, and if we don't, we are going to lose more than we could by refraining.

So we are in favor of export credit subsidies in this country only so long as we have to face the competition of other countries doing the same.

The ideal solution would be to simply ban them entirely among developed countries.

Senator HEINZ. Mr. Samuel, thank you.

Senator Proxmire.

Senator PROXMIRE. Thank you, Senator.

Mr. Samuel, I congratulate you on a first-class statement, and I particularly appreciate what you've emphasized consistently, just as you said at the bottom of page 2 of your statement.

You said the Industrial Union Department is totally opposed to using scarce Government funds to subsidize financing for American industry, including some of our largest multinational corporations.

Good for you! At a time when we're cutting food stamps and aid for Spanish-speaking children's education, subsidizing well-to-do corporations is just wrong. We shouldn't do it.

I especially appreciate what I think is a very practical suggestion you make when you say an alternative which would avoid some of these disadvantages of reactivity, delay, uncertainty and costs, would be to go directly to the issue by preventing unfairly financed foreign bids winning the U.S. contracts. The direct route to that goal would be simply to bar below-market financing for bids on U.S. contracts where there's a competing U.S. bidder. That seems to me to be a very logical, sensible answer.

The chairman has raised an interesting problem there as to whether or not they'd have to prove injury in the process, but I think that's absolutely right.

At a time when we're doing our best in cutting good programs, we've had to do it—I voted for making the cuts too—to have this increased subsidy to the Export-Import Bank, that's what this amounts to.

It seems to me it's just the wrong way to go.

Let me ask you just one more question here. I understand Budd and Bombardier are both foreign owned. Bombardier would assemble cars in Vermont, so there would be some American labor involved, some jobs involved.

In the system of subsidies, how do you determine to which domestic jobs go?

Mr. SAMUEL. The difference between the two was quite substantial. I think Budd was about 80 percent in this country and Bombardier was about 40 percent. So there was a substantial difference in the number of jobs for American workers offered by these two bids.

Senator PROXMIRE. You're still—in that case, it might not be so difficult because you just divided the percentages. But you still are choosing between jobs, aren't you?

Some American workers are going to lose it, and some are going to win them. One State is going to lose—Vermont—and so it makes it a painful choice under any circumstances.

Mr. SAMUEL. Yes, although I guess that the net number substantially favors the domestic producer.

Senator PROXMIRE. There's a loser here. We're going to have later testimony by Mr. Ravitch from the New York City Authority—I presume that whatever would reduce the cost of the subway cars, therefore; and if I were in his position, I would be too. It doesn't make a bit of sense to me to have the Federal Government indirectly in this way subsidize cheaper subway cars for New York City through providing a subsidy to a multinational corporation.

SOCIAL COSTS OF LOSING 13,000 JOBS

Mr. SAMUEL. There are costs and there are costs, as you know, Senator. The social costs of losing 13,000 jobs may far outweigh for

the country as a whole—and you legislate for the country as a whole of course—the savings to communities in New York City.

It's a difficult choice to make, but you have to make them every day when you pass legislation. It seems to me this is how we have to look at this kind of a case.

The destruction of an American industry or part of the American industrial sector, I think, should give us pause, even in the face of higher commuting costs in one area.

And I think these are the conflicts that you have to face: Can we afford to lose the subway car industry and a piece of the steel industry and a piece of the electrical motor industry, and so forth?

Can we really afford that in the long run?

Senator PROXMIRE. I think you've given us a very, very good beginnning toward trying to get these subsidies under control; that is, you recommend wherever you have a sale to this country, instead of permitting this kind of concealed dumping by subsidized financing, you say, if it's below market subsidized by the foreign country, no. That's it, it's out—if there's a U.S. competitor.

I congratulate you on that testimony.

Mr. SAMUEL. I'm glad to have your support.

Senator HEINZ. Senator Riegle?

Senator RIEGLE. Thank you, Mr. Chairman. We've been having a hearing on high interest rates in another part of the building today which has gone on quite a long time. There are a number of people damaged by that problem.

My friend, Senator Proxmire, has just left, and I can't help but say—as said before—that we helped American Motors in the past, which is a Wisconsin-based company, special circumstances—jobs at stake and so forth and so on. The reason for doing that was so clear, at least it was from Wisconsin.

This is even a less direct response because this addresses the issue of unfair competition in violation—direct violation—of trade laws that were in place designed to provide some equity—and even ground upon which our companies compete, and compete with companies abroad, and so forth.

The thing that troubles me—and I trust Senator Heinz has already said this today—is a decade ago we had 12 train car manufacturers in the United States. Today we have one, and we may be on our way to having zero.

And I don't think that's sound either from a jobs point of view, an economic strength point of view, a strategic defense mobilization point of view, or any other point of view.

I think it's wise for us to stay in this business with at least one firm; in fact, I'd like to see more than one, but I certainly don't want to see less than one, and when I see predatory trade practices of this kind where subsidized interest rates are used to come in, this is just one of many—it's a highly visible one, there are others.

MUST RECOGNIZE MAJOR TRANSPORTATION REQUIREMENTS

The problem I foresee is this: I have fought on this committee for many years and on the Budget Committee as well for mass-transit operating assistance coming from the Federal budget, and that's still my disposition. I think it's important to support the national

priority, and I think there ought to be a response. I think it's important that the country recognize the major transportation requirements of big cities like New York, Detroit and other areas of the country, and so I've been one who's been in the forefront of the effort to fight for that as a national spending priority.

The problem, however, if you look across the country, is that people have to be able to work in order to have income, in order to pay taxes, from which we can then in turn provide operating subsidies and capital subsidies to mass transit systems.

It's a closed system and if we start shutting down part of it, it's only a matter of time before we shut down the rest of it. And what we're finding right now—I have found that the number of people who are willing to vote with me on mass-transit subsidies, are getting fewer and fewer in number.

And as I talk to them as votes fall away, I find they're feeling kind of an impoverishment in their States because of the depressed level of the economy and the loss of jobs, and I'm not sure that any local jurisdiction, however justified they may be in just taking a narrow view of how do I get tomorrow's job done at the lowest cost—I can understand why they would be drawn toward whatever attractive financing packages may simply have been offered.

But there comes a point at which if we go down that road far enough, there isn't going to be very much money here for those kinds of things, and people like myself who led that fight are not going to be able to be successful—we're just not going to be able to produce the votes; it's just that simple.

So I think there's a cost and an effect here that has to be considered, and I'm not sure that in the heat of this particular situation, that those set of facts are given sufficient weight.

I think the administration's ducked on this issue; I think it's unfortunate. We do have in the law a provision that is designed to address precisely this problem—precisely. Senator Heinz had a hand in putting it into the law with the support of this Senator and others. And to not avail ourselves of that just means that the country is a net loser; in fact, I have been told by people in Detroit and the New York MTA that had Secretary Regan found on behalf of providing equivalent financing, that the MTA would gain at a minimum by getting a better offer from the foreign supplier. The foreign supplier was prepared to sweeten the deal in certain other aspects, one of those being much higher American domestic job content, which presumably everybody should want.

I would think even the Reagan administration would think that's a pretty good game, if business is going to stay with the foreign supplier. But we missed out on all those things. We would gain nothing and I think have lost a lot by virtue of this decision, so in any event I thank you for your testimony today.

We want to try to move ahead in a way here that helps everybody. There's no desire on anybody's part to want to hurt any municipal transit system.

I know from my part I fought too long and too hard to try to strengthen and help those municipal transit systems, and I want to continue to do that—I believe they're necessary—but we're going to have to have some equity on the trade side, we're going to have to have jobs in this country and people being able to earn, if we're

going to have the money to run these systems. And if we make a mistake in not understanding that relationship, one of these days there isn't going to be any money coming in here for mass transit assistance. It's just that simple, it's just the turn of events here, as people ought to understand exactly what's going on.

Senator Heinz has gone to vote; I'm prepared to go and vote here in a second. Let me at this point thank you for your testimony and let me invite the next panel to prepare to come to the witness table.

I'm going to recess the hearing just long enough to vote. I assume Senator Heinz will be back in a minute, and we'll be ready to resume as soon as he returns. So the committee will be in recess about 5 to 7 minutes.

[Recess.]

Senator HEINZ. Our next witnesses are Don deKieffer and Marc Leland. I'd like Mr. Leland to go first, please.

STATEMENT OF MARC LELAND, ASSISTANT SECRETARY OF THE TREASURY FOR INTERNATIONAL AFFAIRS, ACCOMPANIED BY EDWIN L. BARBER III

Mr. LELAND. Thank you, Mr. Chairman, I'm glad for the opportunity to be here to discuss with you the background to the Secretary's recent decision not to authorize Export-Import Bank financing for subway cars purchased by New York's Metropolitan Transportation Authority—the MTA.

SECRETARY'S DECISION

As you well know and can imagine, this was a tough case. The Secretary's decision took account of the multiple interests of the United States in the case and set a sound precedent for the future. Such future cases would be analyzed on a case by case basis.

I've delivered to the committee a statement for the record. I won't read it as such, but I'll go through it picking some of the highlights, to leave the maximum amount of time for questioning.

We're well aware that the case represented the first use of section 1912. We wanted to produce a decision which would establish a solid foundation for future section 1912 cases. We wished to take into account the broadest range of facts based upon what we see as an accurate reading of the law. Our initial correspondence with the Budd Co. and the early press reports suggested that Budd had the advantage in price and delivery schedules. It appeared that only the heavily subsidized financing package offered by the Government of Canada had swung the deal to Bombardier and that this financing almost certainly fit the noncompetitive criterion in section 1912.

We expected that we had a made-to-order case for retaliation, and looked into the matter on that basis. The further we progressed with our investigation, however, the more apparent it became that this was not such a clear-cut case.

While financing in the broadest sense was a major factor in the MTA's decision, it soon became clear that it was not the noncompetitive terms of the Canadian offer which helped to determine the outcome. In other words it was not the difference between

the consensus rate and the rate offered by Canada, which was the determining factor.

More important was the availability of sufficient funding on favorable terms without which MTA might have had difficulty buying the cars at all.

I should stress that the Treasury looked at the basis for the MTA's decision rather than making our own independent evaluation of Budd's production and delivery capabilities, or the merits of the various cars from an engineering point of view, and so on.

We don't have the resources, facilities or need under the statute to do that.

Senator HEINZ. Let's just make sure I heard that right. What you're saying is you just took the MTA analysis—whatever they gave you—and that's the basis for your decision; is that right?

Mr. LELAND. We analyzed, Mr. Chairman, what we felt was, in the MTA's opinion a determining factor. We did this by reading their analysis, talking with them, talking with Budd, et cetera.

It was not up to us to decide who would be the best bidder.

Senator HEINZ. And of course MTA has absolutely no interest in this decision at all. They are an objective third party; is that right?

Mr. LELAND. No, I think MTA had an interest.

Senator HEINZ. Obviously that isn't your point of view, is it? MTA is not an objective third party to you.

Mr. LELAND. MTA is not an objective third party.

Senator HEINZ. You used that information for your decision, as I understand it. Is that right?

Mr. LELAND. All we could do was to try to understand what their reasoning was in making the decision we did this by reading their own open hearings, by reading the hearings before they made the decision, by reading the hearings they had after they made the decision.

The statute does not require us to make a determination of who we would give the contract to.

Rather we looked at whether noncompetitive financing was a determining factor. As far as MTA's prejudice goes, I can't comment.

Senator HEINZ. There is another option for you which is to have consulted somewhat nearly as fully with the Budd Co. as with MTA. Did you do that?

Mr. LELAND. We certainly had discussions with the Budd Co.; they testified.

Senator HEINZ. Did you consult with them fully? Did you consult with them anywhere near as much as you consulted with MTA—yes or no?

Mr. LELAND. It's difficult to say what "near as much" is. They provided us with a lot of information, as did the MTA.

I believe they certainly had an opportunity to give us any relevant information, as did MTA.

MEETINGS AND CONVERSATIONS

Senator HEINZ. Did you have any meetings with the Budd Co.?

Mr. LELAND. I didn't have any meetings with the Budd Co., nor did I have meetings with MTA.

Senator HEINZ. Did you have—know of any meetings that took place with the Budd Co.?

Mr. LELAND. I know there were several conversations and a lot of deliberation. I don't know of any meetings that took place with the Budd Co.

Senator HEINZ. Did you have any meetings with the MTA?

Mr. LELAND. I don't know if anybdy had any meetings with the MTA.

Senator HEINZ. Do you know of any meetings that took place with the MTA?

Mr. LELAND. There was one meeting.

Senator HEINZ. How many contacts were there with the MTA?

Mr. LELAND. There were telephone conversations as well.

Senator HEINZ. A large number?

Mr. LELAND. Not a large number.

Senator HEINZ. A dozen?

Mr. LELAND. I had one conversation.

Senator HEINZ. I'm finding it a little difficult to figure out exactly what did happen. My understanding is that you did consult very closely with the MTA and you didn't consult much with Budd.

Is that an accurate characterization?

Mr. LELAND. No, I don't think so. I think everybody had a full opportunity to present their case.

Obviously one wanted to hear from Budd. They testified. They provided documents. They wrote.

Senator HEINZ. What you're saying in your statement, if I understand you—and I don't wish to belabor this point—is that basically you looked at what MTA said, and you didn't pay that much attention to Budd?

Mr. LELAND. No, we tried to look at the facts to see what would be relevant and what had been considered by MTA in the first place. I think that's what we were obligated to do.

I don't see that that marked Eximbank financing would have necessarily harmed MTA; they could have gone ahead with their bid anyway.

Senator HEINZ. Well, proceed with your statement.

Mr. LELAND. Thus, I don't see to that degree that they would therefore be a prejudiced party.

That was the only thing, as I just stated, that we could do. Section 1912 requires us to evaluate the factors that are likely to be determining in MTA's decision to buy one or the other subway car.

In order to discharge his responsibility under the statute, the Secretary must make a judgment as to the weight given to delivery schedules, offered prices, et cetera, by the MTA.

After careful review of the facts, such judgments formed the basis for the Treasury's conclusions on each of the major decision factors. I'll not attempt to reproduce all the arguments here. They're all in the study, and I know you've all had a chance to read them.

I shall just state that Budd's price was considered by MTA to be approximately the same as Bombardier's—or better—under certain conditions. Judging by the transcript of the June 10 hearing, the MTA engineers in this case strongly preferred Kawasaki Engineer-

ing. The MTA board also stated that it did not wish to be overdependent on a single supplier.

Budd is producing 316 commuter cars for MTA's Long Island commuter service, and the board stated it expects to ask for tenders from Budd on future purchases of rolling stock.

SIGNIFICANCE OF SECTION 1912

I'd like now to spend a few minutes on the significance of section 1912. Section 1912 of the Export-Import Bank Act has a clear and important purpose. It is to forestall the use of predatory financing in the U.S. market, when the predatory financing matters in the outcome of the sale. And Treasury certainly supports that purpose.

At a minimum the threat of Eximbanks matching could in the right circumstances induce a foreign seller to amend the terms of his financing. At best, the use of Eximbank matching could neutralize predatory financing as an element of decision.

In any case, the conduct of a section 1912 investigation and the publicity that it entails focuses on the waste of the taxpayers' money in this action. In the MTA case, the people and Government of Canada have been made aware that Canada's Export Development Corporation was out-negotiated by the MTA and made a larger expenditure of public funds than might have been necessary to win the sale.

The overall objective here on the part of both the Congress and the administration is to avoid losing business to predatory foreign financing. The immediate question to be addressed is how to accomplish the purpose.

Section 1912 is designed specifically to anticipate and prevent the loss of sales due to financing, the conditions of which are beyond Arrangement limits.

Senator HEINZ. That's only partly true. That's one of the goals of section 1912. The other goal of section 1912 is to discourage this kind of effort by foreign governments, and thereby facilitate meaningful negotiations on an OECD Arrangement.

It eliminates subsidies and frankly eliminates ultimately—as I would hope—OECD nations financing the development of other OECD nations, which is absurd for the governments to do.

Mr. LELAND. I did not say that that was the only purpose. As I stated earlier, I think it is important to hope that we have managed over the last year to increase the interest rates up in the OECD Consensus by 50 percent, and, as of October 15 to get a "no derogation" clause into effect. If we have a "no derogation" clause, the kind of event that we are talking about here basically, the agreement won't happen. And that is something that we have been working to get.

Essentially, as you say, we have served that purpose. However, we still have to look at this one in light of the fact that, first, we had not yet reached that agreement and, second, it wouldn't be relevant to this case. We have since reached agreement on the new arrangement terms and conditions. If Canada came in at this rate after our new agreement is fully in effect, they would be clearly in violation. There would be no question about it then. Therefore they

would not do it, because then they would have the full panoply of everything we have thrown against them.

While there are other considerations, section 1912 is very explicit regarding the criteria for the Secretary's decision. I realize it seems legalistic, but that is basically the kind of criteria he has to look at.

Senator HEINZ. Excuse me, just to be legalistic, would you read the operable language of section 1912? You say that he is supposed to consider each specific factor, is that not right?

Mr. LELAND. Here.

Senator HEINZ. Where in section 1912 does it mention that?

Mr. LELAND. It says, "The Secretary of the Treasury shall only issue such authorizations for the bank to provide guaranteed insurance and credits to competing U.S. sales and sellers if he can determine that, one, the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale and, two, that foreign government credit financing has not been withdrawn."

Senator HEINZ. So all he has to do is to determine whether the availability of that is likely to be "a" determining, not "the" determining factor in the sale. Where did all this list come from? Who said there were specific criteria upon which he——

Mr. LELAND. That is it. We just said the specific criteria are set forth. I said it is very explicit regarding the criteria for the Secretary's decision.

Senator HEINZ. Well, where are they?

Mr. LELAND. "The availability of foreign official noncompetitive financing is likely to be a determining factor in the sale."

Senator HEINZ. But the criteria you have used here, as I understand them, are quality, dependability—a whole series of criteria that aren't mentioned here. Is that not right?

Mr. LELAND. What is mentioned here is that he has to determine what is likely to be a determining factor, which includes several elements of any particular contract to see.

Senator HEINZ. I just want you to be clear that the statute doesn't set forth a list of criteria against which to measure. You are at liberty to manufacture your own, and you have, but let's be clear on what the statute does and doesn't say. It doesn't say "the" determining factor; it says "a" determining factor, and so forth.

So, I just don't want the statute to go down in the hearing record as totally misinterpreted.

Mr. LELAND. That is perfectly true. We have been asked about the cost of the subsidies to the Eximbank if the Secretary had authorized the Bank to match. Treasury calculated that the undiscounted cost of the subsidy offered by the Canadian Government on behalf of Bombardier, based on current borrowing costs of perhaps 14½ percent, is about $270 million. Credit of a similar size and terms by Eximbank, based on its current borrowing costs of about 13.6 percent , would involve a subsidy of probably about $220 million. However, these figures are subject to variation for a variety of reasons, which are set forth in my testimony.

In conclusion, Mr. Chairman, the administration is as firmly opposed as ever to export credit subsidies. We are continuing our efforts to tighten the international rules designed to reduce and hopefully eliminate them.

The improvement to the international arrangement took effect July 6, including the commitment not to derogate, which I mentioned earlier, which takes effect October 15. This will substantially reduce the allowable margin for such subsidy.

Realistically, however, there may be other attempts to use subsidized financing. If that did arise, we have the availability of section 1912, as well as the options that Mr. DeKieffer will speak about to meet this sort of competition.

[The complete statement of Mr. Leland and copy of the decision of the Secretary of the Treasury follow:]

FOR RELEASE UPON DELIVERY
EXPECTED AT 1:30 P.M. EDT
THURSDAY, JULY 22, 1982

STATEMENT OF THE HONORABLE MARC E. LELAND
ASSISTANT SECRETARY OF THE TREASURY,
FOR INTERNATIONAL AFFAIRS
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

Good afternoon, Mr. Chairman. I am happy to be able to discuss with this Committee the background to Secretary Regan's recent decision not to authorize Export-Import Bank financing for subway cars purchased by New York's Metropolitan Transportation Authority (MTA). This was a tough case. The Secretary's decision took into account the multiple interests of the United States in the case and set a sound precedent for the future.

Factors in the Sale

We were well aware that this case represented the first use of Section 1912. We wanted to produce a decision which would establish a solid foundation for future Section 1912 cases. We wished to take into account the broadest range of facts, based on a careful and accurate reading of the law.

Our opening correspondence with The Budd Company, and early press reports, suggested that Budd had the advantage in price and delivery schedules, and that only the heavily subsidized financing package offered by the Government of Canada had swung the deal to Bombardier. Since the financing almost certainly fit the "noncompetitive" criteria of Section 1912, we believed we had a made-to-order opportunity for retaliation against predatory export financing. In the process, we hoped (a) to demonstrate that we would not tolerate such practices in our market, (b) to strike a blow on behalf of American industry and labor, and (c) to highlight the futility of these practices.

The further we progressed with our investigation, however, the more apparent it became that this was not the clear-cut case we had imagined. While financing in the broadest sense was a major factor in the MTA's decision, it soon became clear that it was not the "noncompetitive" terms of the Canadian offer which helped to determine the outcome. More important was the availability of sufficient funding on favorable terms, without which the MTA would have had difficulty buying the cars at all.

The MTA required its vendors to offer financing in order to minimize its need to resort to the capital markets, yet enable it to retain the use of "safe-harbor" leasing. Budd was able to offer financing "cover" for about 17 percent of its bid, while Bombardier and Francorail offered 85 percent cover. The additional improvements in the terms and conditions of the Canadian financing which brought it below the limits specified in the International Arrangement on Export Credits merely enhanced the attractiveness to MTA of the Bombardier bid, without conferring significant additional competitive advantage on Bombardier. This conclusion was supported by the testimony of the MTA's Chairman before the Senate Finance Committee May 28, by statements of the MTA's Board members and others at a hearing in New York June 10, and by the MTA's report on the purchase to the New York State Public Authorities Control Board.

In order to reach a fully considered decision as to the importance of financial factors in the sale, however, the Treasury staff also reviewed the non-financial factors entering into MTA's decision.

I should stress at this point that the Treasury looked at the bases for the MTA's decision rather than making our own independent evaluation of Budd's production and delivery capabilities, the merits of the various cars from an engineering point of view, or some of the other issues which arose in the course of the investigation. Section 1912 requires us to evaluate the factors which were likely to be "determining" in MTA's decision to buy one car or the other. In order to discharge his responsibilities under the statute, the Secretary must make a judgment as to the weight given delivery schedules, offered prices, etc., by the MTA. After careful review of the facts, such judgments formed the basis for the Treasury's conclusions on each of the major decision factors.

I will not attempt to reproduce here all the argumentation in the Treasury staff study; we will be pleased to make copies of that study available to anyone who may not have it already. Suffice it to say that Budd's price was considered by MTA to be approximately the same as Bombardier's, or better under certain conditions. While Budd promised earlier delivery, the MTA staff appears to have had sufficient doubt on that score that it was not a factor in Budd's favor. Also, the MTA is required under New York State law to consider New York content in awarding its contracts; Bombardier offered 16-20 percent New York content, while Budd offered 12 percent and Francorail, 8 percent. Judging by the transcript of the June 10 hearing, the MTA engineers in this case strongly preferred Kawasaki engineering. The MTA Board also stated that it did not wish to be overdependent on a single supplier. Budd now is producing some 316 commuter cars for the MTA's Long Island commuter service, and the Board states it expects to invite tenders from Budd on future purchases of rolling stock. The backlog at Budd's main plant also seems to have been a factor in the MTA's thinking.

The Significance of Section 1912

Mr. Chairman, Section 1912 of the Export-Import Bank Act has a clear and important purpose. It is to forestall the use of predatory financing in the U.S. market when the predatory financing matters in the outcome of a sale. We in the Treasury fully support that purpose.

At a minimum the threat of Eximbank matching could, in the right circumstances, induce a foreign seller to amend the terms of his financing. At best, the actual use of Eximbank could neutralize predatory financing as an element of decision. In any case, the conduct of a Section 1912 investigation and its attendant publicity will focus public attention on the waste of taxpayers' money which export credit subsidies entail. In the MTA case, the people and Government of Canada have been made well aware that Canada's Export Development Corporation was out-negotiated by the MTA and made a much larger expenditure of public funds than necessary to win the sale.

The overall objective here, on the part of both the Congress and the Administration, is to avoid losing business to predatory foreign financing. The immediate question to be addressed is how to accomplish the purpose. We have at our disposal several instruments for doing so, depending on the facts of the case at hand.

In almost any case involving subsidized credits, the countervailing duty law may apply. Its advantage is that it applies a different, and somewhat broader, standard than Section 1912. In a countervailing duty case, the financing offered is compared to market rates and terms, while in a Section 1912 case the offer must be compared to Arrangement limits. The disadvantage for our immediate purposes is, of course, that a countervailing duty is retrospective rather than prospective.

Section 1912 is designed specifically to anticipate and prevent the loss of sales to financing, the conditions of which are beyond Arrangement limits. The Administration entirely supports this objective and believes that Section 1912 should be retained. Its great advantage is that it permits an important degree of discretion in application. This means that it is a flexible device, the use of which can be adapted to the realities of the case at hand. We do not believe that amendments to the statute are needed, Mr. Chairman. But if amendments are suggested, we would hope that they would leave room for judgment in these cases. Otherwise, an element of rigidity could be introduced into the process which could, in some future case, have the effect of requiring us to expend Eximbank resources even where the facts of a particular transaction might not justify it. Neither the Administration nor, we believe, the Congress, wishes that to happen.

A third instrument by which we are asserting an increasing degree of control over subsidized financing is, of course, the International Arrangement on Export Credits. We recently have negotiated improvements in the Arrangement which significantly reduce the allowable margin of subsidy used by foreign governments relative to that available to American exporters. These improvements, together with the commitment by all Participants not to derogate in rate or in term after October 15, will greatly reduce the scope for predatory financing in the future.

Other Considerations

Section 1912 is very explicit regarding the criteria for the Secretary's decision. The question of net employment creation in the United States is not one of these criteria, and therefore did not enter into the Secretary's decision-making. However, that is not to say that the issue of U.S. jobs is not an important one for this Administration. The employment effects should be one of the factors taken into account in the countervailing duty case filed by Budd, in the determination of injury or threat of injury. I would like to note, however, that in this case the issue of employment creation is complicated by the fact that all three bidders intended to provide some direct U.S. sourcing: Bombardier will source at least 40 percent of the value of its contract in the United States.

We often have been asked about the cost of the subsidies to the Eximbank if the Secretary had authorized the Bank to match. The Treasury calculated that the undiscounted cost of the subsidy offered by the Canadian Government on behalf of Bombardier, based on current borrowing costs of perhaps 14.5 percent, is about $270 million. A credit of similar size and terms by Eximbank, based on its current borrowing costs of about 13.6 percent, would involve a subsidy of about $50 million less.

However, these figures are subject to considerable variation because of (a) errors of estimation of future cost escalation, (b) variations in the rate at which credits are drawn down, (c) uncertainties regarding future borrowing costs of the export credit agencies, and (d) differences in methods which could be used to "match." As is true of employment considerations, the cost of the subsidy is not a criterion for application of Section 1912 and so it did not enter into the Secretary's decision-making. I should point out, however, that the United States benefits directly and substantially from the subsidy Canada is paying: not only does MTA receive a direct transfer of resources via the subsidy, but a substantial portion of the subsidized Canadian financing will apply to production of goods for the MTA within the United States.

Conclusion

The Reagan Administration is as firmly opposed as ever to export credit subsidies. We are continuing our efforts to tighten international rules designed to reduce and, hopefully, eliminate them. The improvements in the International Arrangement on Export Credits which took effect July 6, including the commitment not to derogate in rate or in term after October 15, will substantially reduce the allowable margin for such subsidies.

Realistically, however, we must expect that there will be other attempts to use subsidized financing to win sales in this market. We will, whenever appropriate, undertake the same thorough investigation we made of the MTA case. We remain ready to use Section 1912 in all instances where it will serve the purpose its Congressional sponsors -- including some of the members of this distinguished committee -- intended: that of neutralizing "noncompetitive" financing where it is "likely to be a determining factor" in a sale.

We do not believe the MTA case was one in which an offer of Eximbank financing would have changed the outcome, because "noncompetitive" financing as defined in Section 1912 was not "a determining factor."

Financing of Subway Cars
for the
Metropolitan Transportation Authority
of New York

Decision
of the
Secretary of the Treasury
Donald T. Regan

July 13, 1982

THE SECRETARY OF THE TREASURY
WASHINGTON

July 12, 1982

Decision of the Secretary of the Treasury
Pursuant to Section 1912
of the Export-Import Bank Act Amendments of 1978

The decision set out in this memorandum is required by Section 1912 of the Export-Import Bank Act Amendments of 1978 (12 U.S.C. 635a-3), which empowers the Secretary of the Treasury, after making certain determinations of fact, to authorize special financial assistance by the Export-Import Bank of the United States (Eximbank). Assuming the appropriate findings of fact are made by the Secretary, such assistance may be authorized for a United States seller of goods who has been placed at a competitive disadvantage by the availability, to a foreign competitor for sales within the United States, of foreign export financing which exceeds permissible limits under prevailing international arrangements.

The matter before me is a request by The Budd Company of Troy, Michigan (Budd), for Eximbank assistance under Section 1912. The request arises out of competition among three companies -- including Budd -- to build subway cars for New York's Metropolitan Transportation Authority (MTA). The successful competitor thus far, Bombardier, Inc., a Canadian company, offered export financing by the Economic Development

Corporation of Canada (EDC) which, in Budd's view, exceeds the limits prescribed by the International Arrangement on Export Credits to which the United States and Canada, among others, are signatories.

As Secretary of the Treasury, I must make the following determinations of fact under Section 1912 before I may authorize matching Eximbank financing for Budd:

1. that the export credits offered by EDC exceed the limits allowable under the International Arrangement on Export Credits;

2. that the EDC has been asked to withdraw such "noncompetitive" financing and has refused to do so; and

3. that "noncompetitive" financing offered by EDC is "likely to be a determining factor" in the award of the contract to Bombardier.

As detailed in the analysis below, I have determined that the EDC financing offered in support of Bombardier's proposal* exceeds allowable international limits on export credits, and that the EDC has refused to withdraw its noncompetitive financing despite repeated requests by officials of the Treasury Department. However, based upon the Treasury Department's inquiry into this matter, I have concluded that Bombardier would be awarded the contract even if Budd were able to offer matching financing. Thus, I am compelled to conclude that the non-competitive financing offered by EDC is not likely to be "a determining factor" in MTA's decision.

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* As of the date of this decision, EDC's Board of Directors has not yet given final approval to the EDC financing.

Under these circumstances, Section 1912 does not permit me to authorize Eximbank financing for Budd.

Background

In late 1981, MTA awarded, to Nissho Iwai American Corporation, a contract for the construction and delivery of 325 stainless steel self-propelled subway cars by Kawasaki Heavy Industries, a Japanese Company. Shortly thereafter, MTA requested proposals from interested manufacturers for an additional 825 similar cars. Kawasaki did not have the production capacity to fill this additional order, and three companies offered proposals: Budd; Francorail, a consortium of French companies; and Bombardier, a licensee of Kawasaki. As permitted under New York State law, MTA negotiated with each of the three companies in an effort to obtain the best possible terms.

On May 18, 1982, MTA announced that it would place the order for the 825 subway cars with Bombardier. MTA and Bombardier signed a contract for the subway cars on June 10, 1982, contingent upon the availability of EDC financing which would provide an interest rate of 9.7 percent, cover 85 percent of the contract price, and require repayment over a 10 year period beginning six months after delivery of the last car in 1987.

Shortly before the signing of the contract, Budd brought suit in the United States District Court for the Southern District of New York to enjoin MTA's submission of the contract

to the New York State Public Authorities Control Board for approval, until it was clear whether matching financing would be provided by Eximbank pursuant to Section 1912. By stipulation among Budd, Bombardier and MTA, the principal parties to this action, MTA was given the option to cancel the contract if, on or before July 15, 1982, Eximbank provides a commitment to match the terms of the financing offered by EDC and MTA exercises the option to cancel within seven days after its receipt of the Eximbank commitment. The stipulation was intended to permit the MTA contract approval process to proceed pending determination of whether matching financing would be provided under Section 1912 in this case.

The contract, with the option to cancel, was approved by MTA's Board of Directors on June 11, 1982, and by the New York State Public Authorities Control Board on June 30, 1982.

Steps Which Must Be Taken Before
the Secretary of the Treasury Is Empowered
by Section 1912 To Authorize Matching Financing

1. Determination that foreign financing is "noncompetitive". Paragraph (a)(1) of Section 1912, requires the Secretary to determine whether an official foreign export credit agency is in fact offering noncompetitive financing. According to Section 1912, financing is "noncompetitive" if it exceeds "limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed."

The International Arrangement on Guidelines for Officially

Supported Export Credits (the Arrangement) -- to which the United States and Canada, among others, are parties -- has been in place since 1978 and qualifies as "standstills, minutes or practices to which the United States and other major exporting countries have agreed." The Arrangement provides for certain limits (which are changed from time to time) on the terms of foreign official export credits. Thus, if financing offered by EDC (the official foreign export financing entity of Canada) exceeds Arrangement limits in effect at the time of the offer, it would, to that extent, be "noncompetitive" financing for purposes of Section 1912.

The Arrangement limits in effect at the time of the Bombardier proposal, for shipments to relatively wealthy countries such as the United States, included: (1) a maximum official cover of 85 percent of export value, and no direct credits for financing "local costs" (that is, costs incurred in the purchaser's country); (2) a maximum repayment period of 8.5 years, beginning with the mean date of receipt of the goods; and (3) minimum interest rates of 11 percent (for credits of 2 to 5 years) and 11.25 percent (for credits of 5 to 8.5 years).

Treasury officials, after communicating with Canadian and MTA officials, have confirmed that the financing offered by EDC in support of Bombardier's offer contravenes each of these limits. The EDC offered (1) direct credits for 85 percent of total contract value, of which the U.S. content was 40 percent; (2) a repayment term of 10 years, exceeding the Arrangement's 8.5 year maximum and including a "starting point" 6 months after

delivery of the last car, which may be inconsistent with the Arrangement's intent, and (3) a 9.7 percent interest rate, well below the Arrangement minimum of 11.25 percent for 5 to 8.5 year credits.

Thus, on the basis of my inquiry, I have determined that "noncompetitive financing," as that term is used in Section 1912, has been offered by EDC in support of the Bombardier proposal.

2. Requests for withdrawal. Pursuant to paragraph (a)(2) of Section 1912, if the Secretary of the Treasury determines that "noncompetitive" financing is being offered, he is required to request the immediate withdrawal of such financing by the foreign official export credit agency involved, in this case EDC.

On at least five occasions since this matter came to the attention of the Treasury Department in May 1982, Treasury officials have asked Canadian officials to withdraw the original EDC offer and to conform to Arrangement standards in the financing offered in support of the Bombardier proposal. On June 29, I met personally with Mr. Edward C. Lumley, the Canadian Minister of State for International Trade, and requested that the EDC's financing offer be withdrawn and replaced with an offer that is consistent with Arrangement levels. Despite these repeated requests, Canadian authorities have declined to withdraw the "noncompetitive" financing, stating that they are unable to do so without the permission of MTA.

3. Notification that Eximbank may be authorized to provide matching financing. Pursuant to paragraph (a)(3) of Section 1912, if an offer of noncompetitive financing is not withdrawn or

there is no immediate response to the withdrawal request, the Secretary of the Treasury is required "to notify the country offering such financing and all parties to the transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity."

On each occasion that Canadian officials were asked to withdraw EDC's offer of noncompetitive financing, they were informed that, pursuant to Section 1912, Eximbank may be authorized to provide Budd with financing to match the "noncompetitive" financing available through EDC in support of the Bombardier proposal. Budd and MTA have also been made aware that, pursuant to Section 1912, Eximbank may be authorized to provide Budd with such matching financing.

4. Foreign noncompetitive financing as "a determining factor." After taking the steps outlined above, the Secretary of the Treasury is permitted to authorize Eximbank to provide matching financing only if he determines, in accordance with Section 1912(b), that:

> (1) the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale, and
>
> (2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitive financing. (Emphasis supplied)

Since the noncompetitive financing offered by EDC has not been withdrawn, the only remaining question is whether it is "likely to be a determining factor" in the decision by MTA.

In this connection, I have been advised by the General

Counsel of the Treasury that this statutory term must be construed to mean that noncompetitive foreign financing is likely to be a decisive element in the award of the contract; although noncompetitive financing need not be the sole decisive factor, in order to be "a determining factor" it must be one of the factors upon which the decision ultimately turns. Thus, if I conclude that Budd would not be awarded the contract even if it were able to offer financing identical to the noncompetitive financing offered by EDC, then the EDC financing terms -- even though noncompetitive -- are not "likely to be a determining factor" in the sale. Conversely, should I determine that matching financing from Eximbank would be sufficient to alter the award to Bombardier, the EDC's noncompetitive financing would have to be considered a determining factor.

In its evaluation of the competing bids, MTA appears to have focused on and weighed the following seven factors:

1. Availability of government-supported financing from the vendors;
2. Cost of the financing;
3. Price of the cars;
4. Delivery schedules, including reliability of delivery;
5. Quality of design, engineering, and performance, including compatibility with Kawasaki cars already ordered by MTA;
6. Possible overdependence on a single supplier; and
7. New York State content.

The Treasury Department's analysis of MTA's decision -- based on discussions with MTA officials and a review of

published and unpublished MTA documents -- indicates that Bombardier was judged superior to Budd on all seven criteria. The only possible exception was price, since The Budd Company's price per car could have been marginally better than Bombardier's under certain conditions.

The Treasury analysis also found that although the availability of foreign export financing was a very important factor for MTA and New York City, the cost difference between financing on Arrangement terms and financing on the terms actually offered by EDC was not a determining factor in MTA's decision. Other factors, including the availability of foreign export financing (competitive or noncompetitive), New York State content, quality of design, compatibility with cars from Kawasaki already on order, and reliability of delivery, were all considered to be in Bombardier's favor. These considerations, which confirm Treasury's conclusions, are best summarized in a memorandum which MTA submitted to the New York State Public Authorities Control Board and which is attached as an exhibit to this decision.

In my judgment, MTA would award the contract to Bombardier even if matching financing were to be offered by Eximbank in support of Budd's proposal. Thus, I cannot determine, as required by Section 1912, that the availability of EDC's noncompetitive financing is "likely to be a determining factor" in the decision of MTA to award the subway car contract to Bombardier.

Under these circumstances, I am compelled to conclude that the authority provided in Section 1912 of the Export-Import Bank Act Amendments of 1978 cannot legally be invoked to authorize Eximbank to provide matching financing in support of The Budd Company's proposal under the facts and circumstances of this case.

Donald T. Regan
Secretary of the Treasury

EXHIBIT

MEMORANDUM RE:

MTA-BOMBARDIER SUBWAY CAR CONTRACT AWARD

The Memorandum summarizes the basis of MTA's decision to award a subway car contract for 825 R-62 subway cars to Bombardier, Inc. This contract represents the largest single procurement in a largely locally funded, $7.9 billion program to rebuild the New York public transportation system over the next five years.

In the summer of 1981 MTA received competitive bids for 325 IRT subway cars. The low bid was $895,000 per car, which in MTA's judgment was excessive. Questions were also raised at that time as to MTA's ability to market bonds in excess of $1.2 billion in the time frame required to fund the purchase of the full planned order of 1,150 cars. MTA then sought State legislation to authorize negotiation for the purchase of subway cars. It made this proposal for two principal reasons: first, to reduce the price of the cars, and second, to attract sufficient vendor related financing on favorable terms to assure that payments under any subway car contract could be met without sacrificing other elements of the capital program.

Over the past several months MTA negotiated with three subway carbuilders: Bombardier, a Canadian firm; Francorail, a consortium of French industrial companies; and the Budd Co., a wholly owned subsidiary of the Thyssen Company of Germany. These negotiations followed the award of a negotiated contract for 325 R-62 subway cars to the Nissho Iwai American Corporation, representing Kawasaki Heavy Industries.

MTA's objectives in this negotiation, consistent with State law, were to purchase the highest quality car with the fastest possible delivery, to effect the greatest possible savings taking account of both car price and vendor related financing, to maximize the content of the car manufactured within the State of New York, consistent with considerations of manufacturing capacity, economic benefits and technical objectives, and to afford MTA the greatest protection against potential risks in contractor performance. MTA's ultimate decision to award to Bombardier was based on the Authority's judgement that Bombardier's offer was, with respect to each of the factors noted above, either superior to or the equivalent of the offers of its two competitors.

With respect to both price and financing, Bombardier offered the most advantageous terms. Its car price ($788,770 per car) was below that of Francorail's and roughly equal to Budd's (based on equivalent contractual options). The amount of financing offered by Canada's Export Development Corporation (85% of total contract price with repayment over ten years) was the most favorable offer, and an extremely important consideration in MTA's willingness to commit to a contract of this magnitude. In contrast to the availability of financing, the favorable interest rate (9.7% p.a.), while providing substantial and important economic benefits to MTA, and providing the basis for Bombardier's equality with Francorail was not the central factor in choosing Bombardier. Given MTA's need to raise more than $4 billion in public market financing over the next five years and the pressure this will place on all New York State and City agency borrowings, availability of the EDC financing offer is a most significant factor.

With respect to car quality and overall confidence in carbuilder engineering, MTA had a clear preference for the Bombardier offer, and this was a substantial factor in MTA's decision. Bombardier had entered into a licensing agreement with Kawasaki Heavy Industries, so that the Bombardier cars would be substantially identical to the Kawasaki cars the MTA has already committed to purchase. MTA's evaluation of Kawasaki's work thus far is extremely favorable, and similar engineering offers the MTA the advantage of compatibility with other new cars in the IRT fleet, with consequent beneficial impacts on maintenance and parts inventory requirements.

While Budd promised a slightly faster delivery schedule than Bombardier or Francorail (which were roughly equivalent), it was MTA's judgement that the Bombardier schedule was more likely to be met. Bombardier's recent delivery record is quite impressive, while Budd is behind in current orders, with a backlog swelling to more than 1,100 cars. In fact, because Budd's Red Lion (Philadelphia) plant is filled to capacity, Budd proposed to build this order at a new assembly facility; first planned for Martinsville, Virginia and then for Hornell, New York. This was cause for considerable concern by MTA, in that either facility would require substantial capital investment and the hiring and training of a new work force. In light of MTA's concern for reliability and performance, and its recent experience with the faulty manufacture of both rail cars and buses, assembly by Budd at an unproven facility was a manufacturing risk MTA was most reluctant to take.

Bombardier's offer was also preferred on the basis of New York State economic activity that would be stimulated by its production plan. The Bombardier offer included 16% in New York content (with a potential of 20%), while Budd proposed 12% (including Hornell assembly) and Francorail 8%. The New York State Department of Commerce has confirmed MTA's judgement in this regard; it reported that the Bombardier award will produce the greatest number of jobs for New York State and will likely result in greater long-term benefits through repeat orders generated by the initial component manufacture.

Finally, MTA, as a matter of prudent business judgement, was unwilling to rely on the financial and manufacturing capacity of any single company for the two largest procurements in the five year rebuilding program. MTA has already committed to Budd for the purchase of 316 commuter cars at a price expected to exceed $350 million. Furthermore, Budd is competing for an additional subway car contract that will be awarded later this year. It is not in MTA's interest to rely so overwhelmingly on any single company, both from the short-term perspective of minimizing risks of delivery delays and the long-term perspective of generating competition within the car building industry for future MTA procurements.

In summary, while the economic analyses and negotiation process relating to this contract were extraordinarily complex, the ultimate decision as between the three bidders was clear. On the basis of all of the specified MTA objectives, Bombardier's offer was preferred.

FINANCING OF NEW YORK CITY SUBWAY CARS: TREASURY DEPARTMENT INVESTIGATION UNDER SECTION 1912, EXPORT-IMPORT BANK ACT

Executive Summary

The Treasury has conducted an extensive review of the circumstances surrounding the purchase by the New York State Metropolitan Transportation Authority (MTA) of subway cars manufactured in Canada. The issue at hand was whether the Secretary of the Treasury should authorize the U.S. Export Import Bank to match the subsidized Canadian financing.

The inquiry found that the MTA's purchase decision hinged on seven major factors:

1. The availability of government-supported financing from the vendors;
2. The cost of the financing;
3. The price of the cars;
4. Delivery schedules, including reliability of delivery;
5. Quality of design, engineering, and performance, including compatibility with Japanese-built cars already ordered by the MTA;
6. Possible overdependence on a single supplier, and
7. New York state content.

The evidence shows that the Canadian bidder -- Bombardier, of Quebec -- has been judged superior to the U.S. bidder on all seven counts. The only possible exception was price, where the American bidder -- the Budd Company -- offered a price which was approximately the same as Bombardier's but could be marginally better under certain conditions. The French bidder offered a financing package equivalent to Bombardier's, but has been eliminated primarily because of inadequate New York State content.

It is the judgment of the Treasury staff that The Budd Company has been eliminated because, in the opinion of the MTA Board of Directors, the weight of all seven selection criteria is against it. Among those criteria, the availability of officially supported export financing on favorable terms and conditions certainly was an important factor.

But for the Secretary of the Treasury to authorize matching financing by the U.S. Export Import Bank, the availability of foreign "noncompetitive" financing must be adjudged "likely to be a determining factor" in the sale. "Noncompetitive" under Section 1912 means financing which exceeds limits prescribed by the International Arrangement on Export Credits. In the opinion of the Treasury staff, the contract would likely have been awarded to Bombardier even if Canada had offered financing the terms and conditions of which were strictly in accord with the Arrangement. Further, even if the U.S. Export-Import Bank were to offer financing for Budd to match the present Canadian offer, the contract still would likely be awarded to Bombardier. Therefore, the availability of "noncompetitive" financing, while certainly an element in Bombardier's favor, is not likely to be "a determining factor." The Canadian Government's export credit agency appears to have offered more generous financing than necessary to win the sale.

If you judge financing to have been a determining factor, the statute does not require you to authorize Eximbank to offer financing for Budd. You may do so, but it is a matter of your judgment whether financing is wise and appropriate.

Genesis of the Case

On May 18, 1982, the New York State Metropolitan Transportation Authority announced that it would place an order for 825 stainless steel self-propelled subway cars with the Canadian firm Bombardier, of Quebec. The cars were to be produced by Bombardier under license from Kawasaki Heavy Industries, of Japan, and were to be identical to 325 cars previously ordered from Kawasaki by the MTA. The Bombardier price was $798,770 per car, or $658,985,250 total, exclusive of escalation charges. The transaction was to be financed by a loan from the Export Development Corporation (EDC -- Canada's official export credit agency) at an interest rate of 9.7 percent, covering 85 percent of the contract price, to be repaid over a ten-year period beginning six months after delivery of the last car in 1987. These terms were much more favorable than those available on the New York capital markets.

A French consortium, Francorail, also bid on the project, offering similar financing.

On the same day, the Treasury Department received a telex from the Budd Company, of Troy, Michigan, one of the losing bidders on the contract. The Budd telex, and a letter which followed, stated Budd's belief that the Canadian financing was a determining factor in award of the contract since Budd declared its price to be lower, and its delivery schedule earlier, than Bombardier's. Budd consequently asked Treasury to invoke Section 1912 of the Export-Import Bank Act to allow Eximbank to match the Canadian financing. See Tab A for the Budd communications and Treasury's response.

Section 1912 requires the Secretary of the Treasury, on receipt of information that foreign sales to the United States are being offered involving foreign official export credits "which exceed limits under existing standstills, minutes or practices" to which the United States is a party, immediately to conduct an inquiry into the facts. If the Secretary determines that such "noncompetitive financing" is being offered, he is to request its immediate withdrawal. If the offer is not withdrawn or if there is no immediate response to his request, the Secretary shall notify all parties that Eximbank may be authorized to offer matching financing to competing U.S. sellers. The Secretary may authorize Eximbank to match only if he determines that the foreign financing "is likely to be a determining factor" in the sale, and if the foreign

offer has not been withdrawn when the Eximbank is authorized to match. See Tab B for the text of Section 1912.

The undertakings on official export credits negotiated within the OECD, principally the International Arrangement on Guidelines for Officially Supported Export Credits, are covered by Section 1912's reference to "standstills, minutes or practices." The Arrangement calls for (a) maximum official cover of 85 percent of export value; (b) maximum term of 8.5 years, beginning with the mean date of receipt of the goods, for shipments to relatively wealthy countries such as the United States; and (c) minimum interest rates of 11 percent (for credits of 2 - 5 years) and 11.25 percent (for credits of 5 - 8.5 years). These minimum rates have prevailed since November 16, 1981; prior to that, the minima were 8.5 percent and 8.75 percent, respectively.

Immediately on receiving the Budd telex, Treasury requested the U.S. embassies in Ottawa and Paris to confirm that offers inconsistent with the Arrangement had been made. If such offers had been made, the embassies were asked to request withdrawal of the offers and report the results. The first two steps required by Section 1912 were thus encompassed in one instruction.

Over the ensuing two weeks the Treasury staff was in frequent telephone contact with the two U.S. embassies, as well as with French and Canadian government officials and with the staffs of their respective embassies in Washington. On June 3 a Canadian delegation visited Washington for discussions with Treasury and other U.S. Government agencies concerned with the case. On the same day, detailed telex messages were received from Paris giving the French view of events.

These investigations showed that, as alleged by Budd, the Bombardier offer benefits from heavily subsidized Canadian government financing. Moreover, the EDC offer represents a derogation from the terms of the Arrangement in three respects. First, the 9.7 percent interest rate lies well below the Arrangement minimum of 11.25 percent in effect at the time the offer was made. Second, the term of 10 years exceeds the Arrangement's 8.5 year maximum for relatively wealthy countries and the "starting point" of 6 months after delivery of the last car is arguably stretched beyond the Arrangement's intent. Third, EDC has offered to finance 85 percent of the contract value, including U.S. content amounting to 40 percent of the total; the Arrangement prohibits direct credits for such "local cost" financing.

On June 14, Canada's Deputy Under Secretary of External Affairs contacted the Treasury to confirm that his government was in no position to consider raising its interest rate offer to MTA. He stated that the Canadian Government had attempted to convince the MTA management to accept terms and conditions consistent with the Arrangement, but that the MTA Chairman had refused. He added that Canada did not feel it could unilaterally change its financing offer, thereby risking both its credibility and a sale which is of great importance to Canada. Minister of State for International Trade Lumley conveyed the same message to the U.S. Embassy in Ottawa at the end of that week.

The French-Canadian Competition

The French and Canadian financing offers evolved as follows. In the autumn of 1981 the MTA requested bids for its first order of 325 cars. Upon learning that Japan would offer financing at 8.5 percent interest for five years, the French matched the offer and so notified Canada. According to the French, the Canadians responded that the Japanese offer applied only to the first installment, of 325 cars, and not to the second, of 825 cars (since Kawasaki apparently did not have the available capacity to bid on the remaining 825).

France thereupon replied that it would offer 8.5 percent at five years for no more than 325 - 400 cars, matching the Japanese offer. After inclusion of the standard guarantee fees and exchange risk insurance fees, the effective interest rate on the French offer for the first 325 cars was 9.7 percent. The French stated further that they would offer an interest rate of 11 percent at five years for the remaining 825 cars, as required by the Arrangement -- so long as Canada did the same. The French state that they repeatedly asked EDC to confirm its acceptance of this undertaking, but received no satisfactory answer.

Canadian Government officials maintain that they sought a "common line" with France throughout the course of the negotiation, and believed in February that they had agreement to offer no better than an 11 percent interest rate for five years. However, they also maintain that later in the spring they received indications from unnamed sources that the French were violating this common line by offering an interest rate of 9.7 percent. The Canadian officials stated they were "determined that the

French [not] be able to steal this project on the basis of cheap financing," and so offered 9.7 percent interest themselves. At some point in April or early May they also stretched their terms to 8.5 years, and finally to ten years.

By May the French had heard rumors of increasingly favorable Canadian financing offers, and requested confirmation from the EDC. When no reply was forthcoming, the French simply informed MTA that they would match any Canadian financing package, no matter how favorable. In the final evaluation of bids by the MTA, the French financing package is shown as identical to the Canadian.

Both Canada and France, therefore, claim that they sought a "common line" in good faith, and offered more favorable financing only when convinced that the other party was doing so. The evidence at hand consists of two detailed telexes from the French (at Tab C), notifications from the French and Canadians to the U.S. Eximbank that they were derogating from the guidelines of the Arrangement on Export Credits (Tab D), oral statements by Canadian officials in Ottawa and Washington which on occasion were either vague or incomplete, and a statement by MTA's Special Counsel on May 28 before the United States District Court for the Southern District of New York (Tab E).

The exchanges between Canada and France seem to have taken place at a time when the MTA was bargaining intensively with all bidders over terms (see below). Given the detailed documentation France has provided (Tab C) and the incomplete evidence on the Canadian side, the conclusion seems inescapable that the Canadians were the first to break ranks. They appear to have been pressured by MTA negotiators into offering progressively more favorable financing in order to forestall a possible loss of the contract to Francorail. The French, on the other hand, appear, on the basis of their detailed recitation of dates, telex numbers, and texts, to have made serious efforts to respect the Arrangement, derogating only when Canada did so.

It is clear that the French financial competition was never as severe as the Canadians believed, and that more scrupulous attention to the exchange of telex information with French authorities could have resulted in Canadian financing at no more favorable terms and conditions than those specified by the Arrangement.

Financial Evaluation

It now must be asked whether "noncompetitive financing" of the Bombardier offer "is likely to be a determining factor" in the MTA purchase, as specified by Section 1912. To answer this question, detailed information on all three offers was obtained from the MTA. A summary of the offers is presented at Tab F.

The discussion in this section, and in the section which follows, points to the conclusion that the availability of government-supported financing in sufficient amounts and on favorable terms was an important factor in MTA's evaluation of the competing bids. As will be shown, both foreign bidders were able to obtain sufficient government-supported financing to minimize MTA's need to resort to the capital markets and yet enable it to retain the use of "safe-harbor" leasing. By contrast, Budd was able to arrange officially supported financing at fixed and favorable rates (from Brazil and Portugal) for only about 17 percent of its total offer, and MTA would have had to go to the capital markets for the rest.

It will be shown that if officially supported financing for all three bids were at terms and conditions specified by the Arrangement on Export Credits, the differences among them would be small: Budd would have slightly more than a 2 percent advantage over Bombardier in Net Present Value terms, and would be on a level with Francorail. These NPV calculations assume that MTA has easy access to the capital markets at a fixed long- and short-term interest rate of 14 percent. In fact, there is considerable uncertainty as to the amount and cost of funds MTA could raise commercially.

Thus, it will be shown in the discussion which follows that the availability of sufficient financing on favorable terms and conditions was an important factor in Budd's loss of the contract. But the additional improvements in the Canadian financing which brought it below the limits specified by the Arrangement merely enhanced the attractiveness of the Bombardier bid from MTA's point of view, without conferring any additional advantage on Bombardier. Moreover, even were Budd able to offer matching financing, the contract would still likely be awarded to Bombardier for other reasons. Therefore, it is not possible to find that "noncompetitive financing" within the meaning of Section 1912 is likely to be "a determining factor" in the sale.

Morgan Guaranty Trust, one of the MTA's financial advisors, conducted the financial analysis of the competing bids. A summary of their analysis is attached at Tab G. The central calculation is that of the Net Present Value (NPV), which is a measure of the market's evaluation of the total package over its lifetime, including net payments for both the product and its financing. This calculation assumes that the alternative for MTA would be to issue 25-year bonds at an interest rate of 14 percent -- an assumption which a survey of Treasury's contacts in the financial markets suggests is correct (although no such borrowings ever have taken place). Any calculation of Net Present Value is subject to considerable uncertainty regarding estimates of future market conditions and other factors; yet it is an important and commonly used tool for such purposes as evaluating the relative merits of competing bids which will extend over long periods of time.

Morgan obtained the NPV by summing the MTA's discounted monthly payments. The net monthly payments are derived by adding monthly progress payments, interest charges, and principal repayments, then subtracting the value of new finance drawn down for each month. (The progress payments schedule is sketched out in Tab F.)

Nonfinancial parameters of each bid, such as quality and delivery schedules, were not included in Morgan's calculations, but were left to the judgment of the MTA Board.

For the sake of comparison, the Morgan computations at Tab G show the NPVs at various discount rates in addition to the assumed borrowing rate of 14 percent. Clearly, as MTA's assumed borrowing rate falls from 20 percent, the advantage conferred on Bombardier by the 9.7 percent rate it is able to offer declines. The break-even point occurs somewhere around 12 percent. If MTA's market borrowing costs were to fall below the 12 percent region, the advantage resulting from Budd's lower price more than offsets the advantage of Bombardier's more favorable financing. (See subsequent discussion of price.)

According to Morgan's computation, the NPVs of the bids, without official financing packages, are:

Table 1

Budd	$569 million
Francorail	$583 million
Bombardier	$602 million

The NPVs with the official financing packages are:

Table 2

Francorail	$516 million
Bombardier	$520 million
Budd	$553 million

Thus, Budd appears to enjoy a 5.8 percent financial advantage over Bombardier without Canadian Government support, and to suffer a 6.4 percent disadvantage with it. These are perceptible though not necessarily decisive differences in either case, since nonfinancial factors also were important in the decision, as will be shown.

A crucial question is how the ranking of bids would change if all participants abide by the limits set out in the International Arrangement on Export Credits, since this is the standard prescribed by Section 1912. The Treasury staff's analysis indicates that where Arrangement requirements as to interest rate, cover, and term are observed, the bids would be valued roughly as follows:

Table 3

Francorail	$558 million
Budd	$560 million
Bombardier	$573 million

This shows Budd 2.3 percent ahead of Bombardier, and on a level with Francorail.

However, it is essential to note that an adjustment of bid evaluations derived from respecifying financial terms as done above cannot fully indicate which bid would have been best had the Arrangement on Export Credits been observed, for several reasons.

First, the final bid is the result of a simultaneous negotiation over price and financial terms; modification of any element of the package affects others. For example, in bidding on the first MTA contract Kawasaki lowered its

financing rate for the sale but simultaneously raised its initial offer price to compensate. Another example is the earlier delivery forecast by Budd, which results in more rapid payment and thus a higher NPV, hurting the financial evaluation of its bid. (If Budd could delay all payments for a full year it would reduce its NPV by over $60 million.) As a final example, Francorail complained on June 10 that its price could have been lower if it had had an opportunity to bid on a contract without MTA's requirement for indemnification against possible countervailing duty assessments.

Second, uncertainties of estimation are so large as to swamp the differences shown in Table 3. For example:

a) Cost escalation provisions make up over 20 percent of the NPV of the bids, but depend on highly unreliable estimates of future price movements.

b) Changes in delivery schedules can significantly affect the NPV, as already indicated.

c) Budd's price per car could rise $23,237 if some Brazilian components it proposes to use fail to pass New York City's qualification tests. This would raise Budd's NPV by around $16 million even without considering the loss of the Brazilian export credit for the components.

There is considerable testimony that MTA's purchase is sensitive to the availability of official financial support. Morgan and others note that the MTA is considering embarking on a borrowing program of as much as $1.6 billion over and above the requirements of financing subway car acquisition, at the same time that other New York City entities will have large borrowing requirements. A number of market sources suggest there may be some unwillingness to accept so much additional New York City-related paper.

At a June 10 hearing by the MTA, Felix Rohatyn, Chairman of New York's Municipal Assistance Corporation (MAC), praised the Kawasaki and Bombardier deals for relieving the market of over $1 billion in demand for competing finance. Had the MTA gone to market with such high borrowing requirements, Rohatyn estimates that MAC's own borrowing costs would have risen by from 0.5 percent to 1 percent. Thus, it is quite possible that MTA's assumed borrowing cost of 14 percent does not reflect the difficulty it would face in borrowing a very large amount of money.

During the May 28 Senate Finance Committee hearings the MTA Chairman, Mr. Richard Ravitch, made plain his desire to secure government-supported financing. He stated in the hearing that it was he who first urged Budd to seek financing from its parent firm, the German steel producer Thyssen, and to explore the possibility of obtaining Eximbank funding under Section 1912. He stated that the advantages of either source would have included "security of financing source, flexibility with respect to MTA's ability to enter the long-term market during more favorable market conditions, and a short-term reduction in the amount of overall New York public financing . . . competing for limited investor capital." (See Tab H.) He also told Budd on several occasions, and the Senate Finance Committee on May 28, that it was Budd's inability to finance more than about 17 percent of its proposal (from the governments of Brazil and Portugal) that rendered its proposal noncompetitive.

It is clear that the availability of adequate official financial support gave Bombardier (and Francorail) a financing advantage over Budd which they otherwise would not have had. It is not clear that the improvement in this advantage resulting from Canada's offer of terms and conditions exceeding Arrangement limits was necessary in order for Bombardier to win the contract.

Other Factors Behind MTA's Decision

Section 1912's requirement that noncompetitive financing be "a determining factor" in a sale raises the question of what other factors may have influenced MTA. The Treasury staff, in addressing this question, reviewed (a) the testimony of Mr. Ravitch before the Senate Finance Committee at Tab H; (b) the minutes of a hearing held by the MTA on June 10, 1982; (c) conversations between Treasury Deputy Assistant Secretary R. A. Cornell and Mr. Ravitch at the latter's office in New York June 9, 1982; and (d) the deposition by MTA's Special Counsel in the Southern District Court, found at Tab E.

Section 1209 of the New York State Public Authorities Law states that transit car purchase contracts can be awarded by negotiation, rather than on the basis of sealed bids, where "the factors subject to negotiation shall include, but need not be limited to, financing, cost, delivery schedules, and performance of all or a portion of the contract . . . within the state of New York."

There is no doubt that financing availability was an important factor in the MTA's calculations, as already shown. Mr. Ravitch stated in his testimony before the Finance Committee that when MTA was initially considering its plans to purchase subway cars, he sought state legislative authority to award contracts by negotiation. His goals were to lower the price and to secure more vendor-related financing. Section 1209 was the result of his efforts.

It may be asked why the MTA did not use federal Urban Mass Transportation Administration (UMTA) grants to purchase the cars. There appear to be two reasons:

1) Ravitch testified to the Finance Committee that only about 18 percent of UMTA funds available for transit capital programs went to MTA in 1981. This would amount to something over $300 million. While this was the lion's share of total UMTA funding in 1981, it would be insufficient to accommodate the $660 million subway car program plus other rolling stock acquisitions and infrastructure improvements planned by MTA.

2) Use of UMTA funds would rule out the use of "safe-harbor leasing" for the cars so financed; but use of "safe-harbor leases" figures prominently in MTA's plans, permitting the acquisition of an additional 225 cars beyond those which otherwise would be possible, according to Ravitch.

In short, the MTA appears to have concluded that reliance on foreign government-subsidized financing represented its most promising method of riding out the current period of high interest rates. There is, of course, nothing to prevent MTA from refinancing its debt through a bond issue at some later date, when interest rates might have declined sufficiently to make the refinancing option attractive. Ravitch's Senate testimony -- quoted on page 9 of this paper -- strongly suggests that he intends to do just that.

A second issue of importance was price. Throughout the early months of 1982, MTA engaged in protracted negotiations with all bidders over price and financing of both its first order of 325 cars, and the second order of 825 cars. These negotiations resulted in

-- price reductions by Kawasaki of over $50,000 per car, or 6 percent of its original low bid, to a price of some $845,000 each for the 325 cars; and

-- a final price by Bombardier of $798,770 each for the 825 cars.

Budd asserted in its letter at Tab A that its price was lowest of the three, at $770,768. To offer as low a price as this and obtain at least some government-subsidized financing, Budd planned to procure the car body in Portugal and obtain Portuguese export financing at 10.25 percent for ten years. Similarly, the undercarriages, motors, and gearboxes would be made by Westinghouse/Brazil, with Brazilian government export credits for six years at an interest rate of 8.5 percent. The Brazilian and Portuguese financing would cover about 17 percent of Budd's total bid.

The MTA analysis at Tab I revises the Budd price to $799,885, making it slightly higher than Bombardier's price of $798,770 per car. This change reflects three factors:

(1) The largest is $23,237 for undercarriages made in Ohio. The MTA invitation to bid specified these undercarriages, which are more expensive than Budd's Brazilian-made ones, and MTA assumes they will be used pending certification of the Brazilian equipment by its engineers.

(2) MTA required all bidders to accept MTA retention of 3% of the contract price as a contingency fund until final acceptance of the cars. Budd made no allowance for this and requested a price increase of $2,061 per car if the MTA insisted.

(3) To increase New York content, MTA required each bidder to use New York Air Brake components. Budd said Westinghouse was cheaper and added $3,819 per car if NYAB were to be used instead.

A third issue of importance was quality and performance. At the June 10 MTA hearing New York City Transit Authority President John Simpson, while acknowledging that all the competitors could produce an acceptable car, spoke in glowing terms of the superior design, engineering, and quality control demonstrated by the Japanese in work on the first order. He stated that Kawasaki had produced

a "pre-prototype" car, beyond the requirements of their contract and at no extra charge, as part of their effort to solve New York's operational and engineering problems. He stated that Kawasaki's work is now three months ahead of schedule and that the quality is "unsurpassed" in the experience of his engineering staff. The fact that Bombardier will use Kawasaki's design and engineering under license "clearly was a major factor" in MTA's decision to go to Bombardier for the second order, according to Simpson.

That Bombardier's car will be identical to the Kawasaki car also will simplify New York's maintenance, parts procurement, inventory control, and personnel training problems -- contributing further to achievement of quality and performance objectives. Yet MTA will have a second source for the Kawasaki cars, avoiding overdependence on one supplier.

The possibility that MTA would be overdependent on Budd was another significant issue. Simpson, at the MTA hearing, and Ravitch before the Senate Finance Committee, both noted that the MTA already has placed orders for some 400 commuter rail cars with Budd, which apparently has an order backlog of over 1,000 cars. The firm's primary plant near Philadelphia now is said to be working to capacity, and deliveries for the Miami and Baltimore subways are said by Simpson to be a year behind schedule. Moreover, Budd may have some quality control problems: some of the cars built for other cities were said by Simpson to be 3,000 pounds overweight -- a serious problem for elevated rail.

Budd asserted in its letter at Tab A that it could complete its deliveries earlier than Bombardier. But the MTA Board appears to have discounted this claim. The MTA order would have had to be produced at plants converted by Budd from other uses, either in Martinsville, Virginia or Hornell, New York. Review of both facilities by MTA engineers showed that both would need extensive renovation, and that a labor force would have to be recruited and trained at either. Moreover, Budd asked the MTA Board for waiver of penalities for liquidated damages for the first two months of any delay which might occur. In light of these facts, plus the order backlog at Budd's main plant, the MTA appears to have concluded that it could not count on timely delivery if it were to order the 825 cars from Budd.

Bombardier, on the other hand, already has a modern, functioning, and fully-staffed assembly plant in Barre, Vermont. It is doing quality work in timely fashion and could handle MTA's order, according to Simpson.

A final consideration related to New York content. There was extensive testimony at the June 10 hearing from Ravitch, the Mayor of New York, and various union leaders regarding the importance of providing as much subcontracting within the state as possible, particularly in high unemployment areas. With this in mind, MTA had specified that such suppliers as New York Air Brake (Watertown -- unemployment rate reportedly 11 percent) must be used. However, Budd's proposal indicated a preference for Westinghouse air brakes. Overall, Budd's offer was evaluated by MTA to include 12 percent New York content, while Bombardier offered about 16 percent with a best-efforts undertaking to raise the total to 20 percent. Francorail offered 8 percent New York content. Bombardier's offer appeared clearly superior, in the eyes of city and state political leaders. See MTA's evaluation of New York content at Tab J.

Findings

A review of the major factors influencing the MTA to accept Bombardier's proposal indicates, therefore, that the availability of official financial support at below-market rates was an important factor in the sale. But Section 1912 refers not to below-market rates in themselves, but to "noncompetitive" financing, which in this context means financing exceeding the limits specified in the International Arrangement on Export Credits. (Recall that the financing for the Kawasaki purchase carried a dollar interest rate of 12.25 percent, compared to the Arrangement minimum of 11.25 percent. Section 1912 was not invoked in that case.)

For the purpose at hand, then, it must be asked whether the violation of Arrangement limits in the EDC financing package constituted "a determining factor." In answering this question, the opinion of the General Counsel of the Treasury Department at Tab K was consulted.

From Section 1209 of the New York State Public Authorities Law, and other sources, it is clear that MTA considered at least seven factors important, and possibly determining:

(1) Availability of vendor financing, permitting MTA to avoid resort to the capital market and yet retain the use of safe-harbor leasing;

(2) Cost of financing;

(3) Price of the cars;

(4) Delivery schedules, including reliability of the schedules;

(5) Quality of design, engineering, and performance, including simplification of maintenance, training, inventory, and other administrative requirements;

(6) Overdependence on a single supplier; and

(7) New York content.

In the estimation of the MTA Board, Bombardier was judged superior on all seven counts -- except possibly with respect to price, where Budd's evaluated price is essentially equal to Bombardier's but could be slightly lower if the Brazilian-made undercarriages were accepted. Francorail was judged inferior on all but (1) and (2), where its offer without official financing was better than Bombardier's and with official financing was rated the best of the three because its schedule of progress payments rendered the NPV of its bid lowest. If either or both aspects of financing were overriding, Francorail should have been more in the running than Budd. There is no evidence that it was. Indeed, Ravitch told the Senate Finance Committee that, compared to the Canadian offer, Francorail lost out because of its low New York State content.

The evidence indicates that both Budd and Francorail were rejected in part because the MTA Board developed a preference for Kawasaki based on experience with the first order of 325 cars. When Bombardier emerged as a contender for the second order, of 825 cars, the Board appears to have decided that by using Bombardier it could have the advantage of both (a) Kawasaki's superior design, engineering and quality control, and (b) multiple sourcing. The problem for the Board then would have been how to secure the best deal in terms of price and financing.

During the spring months of 1982, Ravitch engaged in extensive negotiations with all bidders over price and financing, demanding as much officially supported credit as possible and playing the bidders against each other to obtain the most advantageous terms. The political importance attached by the Canadians to securing a major contract for Quebec, and the Canadian determination not to "lose" the deal to subsidized French financing, made them particularly vulnerable to this approach. Viewed in this light, the extent of the Canadian subsidy appears to have been a result of MTA's bargaining tactics and of Canada's determination to win the deal literally at almost any cost.

Given the MTA Board's preference for the Kawasaki cars and need for alternative sources of financing, it appears highly likely that Bombardier could have won the deal at Arrangement terms and rates. France would have matched, but its offer still would have been deficient on other grounds. Budd would not have been able fully to match, and its offer also would have been deficient on other grounds, so the contract still would have gone to Bombardier. Moreover, even were Budd able to offer matching financing, the contract would still likely be awarded to Bombardier, for other reasons. Hence, it is not possible to conclude that "noncompetitive" financing is "likely to be a determining factor" in the sale.

Countervailing Duties

A separate issue, relevant to a full understanding of the financial provisions of the case although not directly relevant to a Section 1912 determination, concerns the countervailing duty petition filed by Budd June 3. Budd alleged that subsidized imports from Canada pose a threat of material injury to the U.S. industry.

The original Bombardier contract provided that Bombardier would indemnify the MTA for any countervailing duties which might be assessed. A contingent modification agreement was entered into by the parties June 10. It specified that, at any time up to or following the issuance of a "Final Decision" imposing countervailing duties as a result of Bombardier's subsidized financing, MTA will have the option either of canceling the financing agreement, or of modifying its terms to eliminate or offset any net subsidy determined to exist.

It further provides that, if MTA has taken action to eliminate the subsidy but it is subsequently determined in a "Final Decision" that no countervailing or other duties are to be assessed, the terms of the financing will revert to those originally agreed upon.

Finally, if the MTA has taken action required of it under the contingent modification agreement to cancel the financing agreement, or to amend it in such a way as to eliminate the subsidy margin, and countervailing duties nevertheless are imposed, the duties will be paid by Bombardier.

For countervailing duties to be assessed, it must be shown that there is a "threat of material injury" to the U.S. industry. If such injury can be shown, duties equal to the amount of the subsidy will be assessed. Processing of a CVD case takes close to six months, even under expedited procedures.

Conclusion

Even if the Secretary were to authorize Eximbank financing for Budd to match the Bombardier financing, it appears the contract still would go to Bombardier for the other reasons discussed in this paper. The conditions of Section 1912 thus are not met. Therefore, the Secretary should decide that the availability of noncompetitive financing is not likely to be a determining factor in MTA's decision to award the subway car contract to Bombardier rather than to Budd.

If the Secretary decides that financing is likely to be a determining factor in the sale, the statute does not require him to authorize matching financing by Eximbank for Budd. He may do so, but it is a matter of his judgment whether financing is wise and appropriate.

Recommendation

That you decide that the availability of noncompetitive financing is not likely to be a determining factor in MTA's decision to award the subway car contract to Bombardier rather than to Budd. (If you decide that the availability of noncompetitve financing is not likely to be a determining factor, then you can not authorize matching financing to be made available by the Eximbank.):

Approve_____

Disapprove_____

Other_____

If you disapprove the above recommendation and decide that the availability of noncompetitive financing is likely to be a determining factor in MTA's decision to award the subway car contract to Bombardier rather than to Budd, then you must make the decision whether to authorize matching finacing by Eximbank:

Authorize Eximbank matching financing_____

Do not authorize Eximbank matching financing_____

Other_____

TAB A

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF
ASSISTANT SECRETARY
FOR INTERNATIONAL AFFAIRS

May 24, 1982

Dear Mr. Doane:

Thank you for your telex of May 17, and your letter of May 20, concerning the report that the New York subway system will purchase Canadian-made cars benefitting from subsidized financing.

As I explained to you on the telephone, this issue is of grave concern to us since we are in the midst of an intensive effort to negotiate significant reductions in export credit subsidies granted by a number of industrialized nations.

Your telex arrived here at approximately 6:15 on the evening of May 17. On the morning of May 18, I instructed my staff to prepare memoranda to the Assistant Secretary of the Treasury for International Affairs, as well as to Secretary Regan, informing them of the latest developments in the case and recalling to them the Treasury Department's obligations under Section 1912 of the Export-Import Bank Act.

We also began work on an urgent telegram to the American Embassies in Ottawa and Paris, instructing them to inform host government officials at an appropriately senior level of the Budd request to invoke Section 1912, and requesting a report on the result. That telegram was dispatched on May 20; since then my staff has been in further touch with the Embassies by telephone to provide additional background information. In addition, the case has been discussed both at the staff level and at the policymaking level in meetings of the federal agencies concerned here in Washington. We will be moving as rapidly as possible to agree on a course of action.

I can assure you that this case is receiving urgent, high-level attention, both here in the Treasury and in other Washington agencies. We will keep you informed of developments, and I would appreciate it if you would keep me abreast of any new information you may receive.

Sincerely,

John D. Lange
Director
Office of Trade Finance

Mr. John P. Doane
Treasurer
The Budd Company
3155 West Big Beaver Road
Troy, Michigan 48084

THE BUDD COMPANY

May 20, 1982

JOHN P. DOANE
TREASURER

CORPORATE OFFICES
3155 WEST BIG BEAVER ROAD
P.O. BOX 5004
TROY, MICHIGAN 48084

Mr. John Lange
Director, Office of Trade Finance
Room 4124
U.S. Department of the Treasury
Washington, D.C. 20220

Re: Proposed Contract Award for 825 Subway Cars to Bombardier, Inc. by New York State Metropolitan Transit Authority ("MTA").

Dear Mr. Lange:

To confirm our telephone conversations and my telex to you of May 17, 1982, The Budd Company ("Budd") hereby requests that Treasury take appropriate action under Title 12, Section 635 a-3 (Section 1912 of the Export-Import Bank Act) of the U.S. Code with respect to the referenced contract award. In substantiation of this request, we would like to offer the following:

1. According to press reports on May 19, 1982 (see attachments) Bombardier's price for each car is U.S. $803,485 (total price U.S. $662,875,125). I hereby confirm to you that Budd's final price which was communicated to MTA on May 17, 1982 was U.S. $770,768 per car (total price U.S. $635,883,600).

2. Press reports also state that Bombardier's final car would be delivered in May, 1987. I hereby confirm to you that Budd proposed a delivery schedule which would result in delivery of the final car in October, 1986.

3. On May 12, 1982, Budd was advised by Morgan Guaranty Trust Company, MTA's financial advisor for this contract, that our competitors' financing was for 85% of their content at a rate of 9.7% and repayable over 8 1/2 years after final delivery. This statement was the basis for our telex request to you for action on May 17, 1982 (copy of telex is attached). Press reports on May 19, 1982 state that the Export Development Corporation of Canada ("EDC") is supporting Bombardier's proposal with financing of 85% of the total price (including approximately 40% U.S. content) at an interest rate of 9.7% and repayable over 10 1/2 years after final delivery. It therefore appears to us that EDC improved the terms of their financing between May 12 and May 18, 1982 when MTA made their announcement. Budd has no knowledge as to whether COFACE matched this improvement on behalf of Francorail, our other competitor. Budd's proposal included financing for approximately

- more -

85% of our foreign content which is approximately 20.5% of our total price, or for 17.4% of our total price. Brazilian and Portuguese subcontractors offered this financing to MTA at rates of 8 1/2% and 10 1/4% repayable over 8 1/2 years following their final shipments.

On the basis of the foregoing, Budd believes that the conclusion that "the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale" (Ref. Section 635 a-3, (b), (1) is an inescapable one since both our price and deliveries were more favorable than Bombardier's. Specifically, we understand that the appropriate interest rate for this project would be 11 1/4% with a repayment term of not more than 8 1/2 years. We would further point out in support of this conclusion that, to our knowledge, Bombardier has never fabricated a carbody from stainless steel or assembled a steel-wheeled subway car, both of which are required by MTA's specifications. Budd has been fabricating stainless steel railcars for almost 50 years and is currently building over 800 steel-wheeled, stainless steel subway cars for the Chicago, Miami and Baltimore systems.

Under MTA's contracting procedures, approximately 30 days must elapse before a contract for the 825 subway cars can actually be executed. Your prompt attention to this request may therefore be of material assistance to us in persuading them to alter their decision in favor of Budd and result in the improvement of fiscal and economic conditions in the United States.

Please call me (313) 643-3522 if I can supply further information or assistance.

Sincerely,

J. P. Doane

eb

cc: Messrs. T. I. Davenport
H. Ewers
H. Foster
B. Kleppinger, Jr.
J. H. McNeal, Jr.(2)
D. W. Manning
P. O. Sichert
R. H. Vansteenkiste
D. P. Williams
D. A. Ward (6)

IP HOWD

OUTGOING MSG FROM NYK GRAND HYATT ROOM 3214 - WAHDY

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R330

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1816 DST 05/17/82 NYK GRAND HYATT

TO THE KIND ATTENTION OF MR JOHN LANGE
DIRECTOR OFFICE OF TRADE FINANCE
U.S. DEPT OF TREASURY

DEAR MR LANGE
AS WE DISCUSSED TODAY THE [BUDD] CO IS COMPETING WITH A FIRM KNOWN AS BOMBARDIER CANADA AND A CONSORTIUM KNOWN AS FRANCORAIL FRANCE FOR AN ORDER FOR 825 TRANSIT CARS WHICH IS EXPECTED ORDERED SHORTLY BY THE NYK METROPOLITAN TRANSIT AUTHORITY (MTA).
THE PROPOSALS FOR THESE CARS WERE SUBMITTED JANUARY 5 1982, AND ARE STILL BEING NEGOTIATED BY THE THREE CAR BUILDERS WITH MTA.
ON MAY 12 82 WE WERE ADVISED BY THE MORGAN GUARANTEE TRUST CO WHO HAS BEEN RETAINED BY MTA AS THEIR FINANCIAL ADVISOR ON THIS PROJECT, THAT BOTH THE CANADIAN AND FRENCH EXPORT CREDIT AGENCIES HAD OFFERED FINANCING AT 9.7 PER CENT P.A. REPAYABLE OVER 8 1/2 YEARS AFTER FINAL DELIVERY.
ON MAY 17 1982 WE BECAME AWARE THAT THE FRENCH AGENCY DELIVERED A NOTICE OF DEROGATION WITH RESPECT TO THIS PROJECT TO THE EXIM BANK ON FEBRUARY 2 1982.
SINCE WE UNDERSTAND THAT THE APPROPRIATE INTEREST RATE FOR THIS PROJECT WOULD BE 11 1/4 PER CENT P.A. WE RESPECTFULLY REQUEST THAT YOUR OFFICE TAKE APPROPRIATE ACTION UNDER SECTION 1912 OF THE EXPORT IMPORT BANK ACT.

SINCERELY
J. P. DOANE
TREASURER
THE BUDD CO
TLX 645601 HHCHNKY NYK
US TREAS WSH D
COMPLETE

TAB B

APPENDIX A

12 U.S.C. 635 a-3. Meeting foreign competition in U.S.

SEC. 1912 (a) (1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, he shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) The Secretary of the Treasury shall only issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, if he determines that:

(1) the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale, and

(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitve financing.

(c) Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: Provided, however, That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended.

TAB C

TELEX

May 12, 1982

Metro New York

In the face of different requests of French bankers and manufacturers, let us confirm to you the following official French position:

First: Let us confirm to you that our wish was to stick to the position expressed in the May 7 telex addressed to the EDC -- a credit with a term of 5 years, covering 85% of the amount, at the twin interest rates of 8.5% for the first 400 cars and 11% for 425 cars, a position which had been adopted in common with the Canadians last February.

Second: Taking account of the latest information on the Canadian financing offer, we specified to you that we would align ourselves automatically with the conditions which would be offered by the Canadian manufacturers, with public support, namely:

A. Lengthening the term of the credit to 8-1/2 years,

B. Fixing the starting point of the credit at the end of the deliveries,

C. Concerning the rate of interst, we would align ourselves with the interest rate benefitting from the support of the official Canadian agency, if that were lower than the interest rate in "First" paragraph above,

D. Regarding the French credit bearing on 85% of the amount of the non-American portion, we were disposed to align ourselves with the Canadian position if the official Canadian stand permitted stretching out the American portion of the credit.

Third: As it pertains to the preceding, the French position consisted of respecting the international rules in effect, but in aliging itself with the most favorable conditions offered by the Canadian party.

Fourth: You are requested to bring this information immediately to the attention of the MTA.

G. De Panafieu:Dirletex

INFORMAL TRANSLATION OF FRENCH TELEX TO EXIM, JUNE 3, 1982

TO: EXIMBANK

ATTN: MR. CHAPMAN

SUBJ: NEW YORK METRO

REF: YOUR TELEX OF MAY 27, 1982

The initial MTA solicitation of offers covered the supplying of 1,150 R 62 cars. Three foreign countries competed for this project: Japan, Canada, and France.

On December 25, 1981, MITI indicated to us that it was offering a 5-year credit at 8.5% for an order of 325 cars. (Telex No. SRL 1409). We informed the French firm that, on the offer of 1,150 cars, the rate of 8.5% would apply only to 325 to 400 cars, the balance to receive only the interest rate of 11%.

We sent our notification LD/F/10/82 on February 2, 1982.

On February 3, EDC informed us that the interest rate of 8.5% offered by Japan applied only to 325 cars and that it was not necessary to apply it to all 1,150 cars (Telex No. 1720 of 2/3/82).

EDC repeated these remarks by telex on February 26, 1982 (Telex No. 2961).

After verification of the Japanese position and a clarification of the transaction in question (another offer for R 68 cars being underway at that time), we subscribed to the Canadian position and so informed EDC by telephone on March 1st and by a followup telex the next day (Telex 4787 of March 2, 1982), as follows:

> "I confirm to you our telephone conversation of March 1.
>
> The position of the French authorities concerning the rate of interest is the following: the interest rate of 8.5% will apply to Model R 62 vehicles to the limit of 325 to 400 cars in so far as the contract will be signed before next May 15, and under reserve that an identical attitude will be adopted by the competition."

It is correct that on this date the French firm sent an offer for the entire R 62 contract at an 8.5% interest rate, but entirely on its own responsibility and fully informed of the position (No. 6932), of the French authorities.

We confirmed our positon to the EDC by telex on March 24, 1982 indicating that we maintain fully the terms of our telex of March 2, 1982.

On May 7, 1982, having been informed of a change in attitude on EDC's part, we telexed to EDC to recall the common position (Telex No. 10073), as follows:

(Quote in English in Original)

> "We understand from French supplier that you are ready to offer financing over 8 years -- instead of 5 years -- for the R 62 order of 800 cars. As a result of this information, we express our deep concern. We recently advised you of our position, which is a common line with you, and we confirm that the financing at a rate of 8.5% over 5 years applies to an order up to 400 cars. Beyond this figure we will apply the new consensus rate of 11% over 5 years.
>
> You are kindly requested to send us your confirmation by return on this common line."

The same day, we telexed EDC again requesting its position on the length of the credit, the rate of interest, the starting point, and the local cost financing.

The EDC did not respond to these two telexes. In a telephone conversation with EDC on May 10, we confirmed our position as defined on March 2 and reaffirmed on May 24 and May 7, with EDC refusing to indicate the new financing conditions that it had in mind.

Finally, on May 12, we sent EDC the following telex (No. 10379):

> "I refer to our two telexes of May 7 and to the telephone conversation of May 10 between your service and the DREE.
>
> First: I confirm to you that the French position is that which was indicated in the telex of the DREE of Friday, May 7, conforming to the position which we have always expressed and in full accord with the EDC.

Second: Taking account of the indications of the financing offers made by the Canadian manufacturer and which had been communicated to us, both through the American buyer and through French manufacturers and bankers, we have decided to align ourselves automatically with the most favorable conditions, with public support, that you would offer, notably concerning the interest rate, the length of credit, the starting point, and the guarantee and financing conditions for the American portion."

From these events we draw the following conclusions:

1. The position of the French authorities was clear and invariant up to the conclusion of this affair: For the project of 1150 model R 62 cars we have without ambiguity indicated that we were in favor of a five-year credit, without local cost financing (prohibited according to the rules of the consensus); and that the 8.5% interest rate would apply only to 325 to 400 cars, to align us with the Japanese position, the balance being subject to the normal interest rate of 11%.

2. As the alignment can occur only with public support, on which the French authorites had affirmed and confirmed that the public support at an interest rate of 8.5% was limited to 325-400 cars, nothing authorized the EDC to consider that a matching situation existed for the balance.

3. The degradation of credit conditions which has affected this transaction could have been avoided if the EDC had held to the positions defined in March.

It is regrettable that since that date the EDC has not judged it useful to respond to our different telexes.

4. To our knowledge, the conditions finally accorded by the EDC did not conform to the Consensus and have not meanwhile been notified under existing procedures.

Finally, we inform you that in this transaction the insurance premiums were normal, were composed of an increase in the interest rate of 0.5% over the 8.5% and 11% interest rates proposed, plus the other credit insurance charges payable by the supplier and variable according to the characateristics of the operation. Banking commissions are additional.

TAB D

FEBRUARY 2 TELEX

TO THE ATTENTION OF ALL CONSENSUS PARTICIPANTS

NOTIFICATION

1. DREE
2. LD/F/10/82
3. NOTIFICATION OF AN INDIVIDUAL OPERATION WHICH WE CONSIDER AS A DEROGATION JUSTIFIED BY THE NEED TO MATCH.
4. WE GIVE NOTIFICATION WITHOUT DISCUSSION.
5. USA
7. CARS FOR THE SUBWAY
8. CATEGORY 10
10. A. 15 PERCENT CASH PAYMENT
    B. 5 YEARS -- 10 EQUAL SEMI-ANNUAL INSTALLMENTS
    C. SEMI-ANNUAL GROUPINGS OF DELIVERIES
    D. 8.5 PERCENT INTEREST
11. MATCHING THE INTEREST RATE OFFERED FOR MITI.

MAY 3 TELEX

SUBJECT: NEW YORK CITY SUBWAY

FURTHER TO YOUR TELEX OF APRIL 14, 1982, WE WISH TO ADVISE THAT EDC HAS PROVIDED AN INDICATION OF INTEREST IN FINANCING THE SALE BY BOMBARDIER, INC. OF 825 SUBWAY CARS TO THE METROPOLITAN TRANSIT AUTHORITY OF NEW YORK CITY. EDC INDICATED THAT A PORTION OF THE FINANCING WOULD BE PROVIDED AT PRE-NOVEMBER 16 RATES ONLY AFTER HAVING ATTEMPTED WITHOUT SUCCESS TO NEGOTIATE A COMMON LINE WITH THE FRENCH THAT AN INTEREST RATE AT POST-NOVEMBER 16 RATES BE PROVIDED.

VERY BEST REGARDS,

B.R. KING.

TAB E

AFFIDAVIT OF STEVEN M. POLAN

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STEVEN M. POLAN, ESQ., being duly sworn according to law, deposes and says:

1. I am Special Counsel to the Metropolitan Transportation Authority ("MTA") and I have held this position since February, 1981. I am fully familiar with the facts related herein and I submit this affidavit in support of the Metropolitan Transportation Authority in the event that litigation is commenced against MTA by the Budd Company ("Budd") as threatened by Budd in its May 20, 1982 telegram to Richard Ravitch, Chairman of MTA.

2. My responsibilities as Special Counsel have included extensive participation in MTA's subway car acquisition program for its IRT Division. The objective of the IRT program is to purchase 1,150 rapid transit cars for the division.

3. In its May 20 telegram, Budd challenged the proposed agreement because it affords MTA financing terms (subsidized by the Export Development Corporation of Canada) that are more advantageous than Budd could present at the close of negotiations on car price and financing. A copy of the telegram is annexed hereto as Exhibit A.

4. On April 15, 1981 the MTA solicited competitive bids for the manufacture of 325 subway cars. The terms of the solicitation provided that MTA would have the option to purchase up to a total of 1150 such cars. On July 15, 1981 bids were received from Nissho-Iwai and Budd in response to the April solicitation. Nissho-Iwai was the low bidder with a price of $894,000 per car.

5. No award was made, however, because MTA considered the prices submitted to be excessive and because new state legislation gave MTA the opportunity to achieve savings by the use of local debt secured by a pledge of operator revenues to procure a full 1,150 car order. Specifically, it had become apparent that the possible availability of vendor related financing could generate interest savings, and provide MTA greater flexibility in entering the long term public bond market. Consequently, MTA informed both Budd and Nissho-Iwai of the importance of obtaining favorable vendor related financing.

6. Because of the need to maximize its flexibility to obtain advantageous price and financing terms, and because of the complexity of the subway car purchase transactions, the MTA sought New York State legislation authorizing negotiation for the purchase of subway cars. Without this legislation, MTA would be

confined by statute to a formal bidding procedure for subway car acquisition. On November 11, 1981, legislation was enacted to allow negotiation of subway car purchase agreements. This statutory authorization will expire on August 31, 1982.

7. Prior to enactment of this legislation, MTA communicated preliminarily with the Budd Company on the subject of financing. On October 12, 1981, Budd notified the MTA that it was attempting to obtain financing from Brazil and from its German parent company, the Thyssen Company. On November 9, 1981, Budd informally communicated that it might be able to fulfill the contract with car shells from Brazil, trucks (undercarriages) from Hungary, and brakes from Germany, with financing from the respective countries.

8. In November 1981, Budd offered its first formal proposal of financing through Brazil. Budd further notified the MTA that it was continuing its attempts to obtain additional financing from Portugal, Australia, Canada, and Argentina.

9. On November 15, 1981, the MTA published in the New York Times its formal solicitation of offers (under the new negotiation statute) for the contract to supply 1150 cars. On January 5, 1982, four formal offers were received (from Bombardier, a Canadian firm; Francorail, a consortium of French industrial companies; Budd; and Nissho-Iwai).

10. During January 1982, MTA considered offers not only with respect to the entire 1150 car requirement, but also with respect to just the initial 325 cars. During January, Budd submitted a proposal modifying the terms of its July 1981 bid with respect to the 325 car contract to include financing from Argentina (for the truck component) and from either Brazil or Portugal (as alternative suppliers/financing sources for the car shells).

11. On February 24, 1982, the MTA Board by resolution rejected both of the July, 1981 bids in the expectation that further negotiations would bring about lower car prices and improved financing terms.

12. Thereafter, negotiations with Nissho-Iwai and Budd were concluded as to the contract to supply the initial 325 cars. Nissho-Iwai emerged from those negotiations with the superior offer. Nissho-Iwai offered better terms, including significantly more advantageous financing terms. On March 8, 1982 a notice of public hearing was mailed to all offerors, including various subcomponent manufacturers which had submitted subcontract offers, informing them that the MTA had decided to recommend award of the contract for the first 325 cars to Nissho-Iwai. This notice was also published in the New York Post.

13. On March 23, 1982, when the public hearing was held, MTA Chairman Richard Ravitch submitted to the MTA Board a summary of the factors which resulted in the recommendation that the contract be awarded to Nissho-Iwai. The hearing was open to the public and four persons testified in opposition to the MTA's recommendation. The Budd Company did not testify or submit papers in its own behalf, although it had the right and opportunity to do so.

14. After the hearing, the board members deliberated and unanimously approved award of the contract to Nissho-Iwai. Next, the contract was submitted to the Public Authorities Control Board ("PACB") for its approval, which is required by statute. The PACB did not signify disapproval and was thus, by statute, deemed to have approved the award upon the expiration of 15 days.

15. As early as October, 1981, the Budd Company was informed that the MTA wanted financing from sources other than federal funds or MTA bonds. The MTA attempted in the Winter of 1981 to get federal authorities to allow the MTA to bond against future federal allocations so that the MTA could presently obtain sufficient funds to enter into long-term contracts and subcontracts. More recently, the MTA attempted to obtain a clearinghouse line of credit of $750 million through a consortium

of banks organized by Manufacturers Hanover Trust. Unfortunately, neither of these financing mechanisms could be obtained. Moreover, the MTA had not yet received an investment grade rating for its bonds, making market access in the amounts required and within the timing required uncertain. Thus, the Budd Company was advised that in order to be competitive in the negotiations for this contract they would have to present better financing terms. As discussed above, this resulted, at an early date, in Budd attempting to procure source financing from potential component suppliers in Brazil, Hungary, Portugal, Argentina and Australia.

16. Representatives of the MTA have met at least once a month since the Fall of 1981 with officials from Budd. I was present at most of those meetings. At each meeting, Mr. Ravitch informed the Budd representatives that vendor-related financing was absolutely necessary. The Budd Company thus was informed repeatedly that it was in a difficult competitive position due to its lack of competitive financing terms.

17. In addition, Mr. Ravitch and I personally and repeatedly pointed out the possibility that financing might be available through the U.S. Export-Import Bank. The existence of Ex-Im "matching" financing was stressed to Budd by Mr. Ravitch even prior to award of the Nissho-Iwai contract.

18. MTA's objectives in the negotiation of an equipment acquisition contract are established by statute. Consistent with its statutory mandate, MTA endeavored for the remaining 825 cars to purchase the highest quality car with the fastest possible delivery; to effect the greatest possible savings taking account of both car price and vendor-related financing; and, to maximize the content of the car manufactured within the State of New York, consistent with considerations of manufacturing capacity, economic benefits and technical objectives.

19. On February 25, 1982, a full and specific offer was received from Francorail. This submission, which clarified previous communications from Francorail, offered financing of 85% of the French content of the car at the rate of 8.5% payable over 5 years beginning 6 months after first delivery (to the 8.5% was added .5% insurance fee and .7% exchange rate risk allocations, resulting in 9.7% financing). This offer was not modified for several months.

20. Bombardier made its first detailed proposal on March 3, 1982. This proposal contained a letter from the Export Development Corporation of Canada which offered financing of 85% of the entire content of the contract. The interest rate offered was 9.5% for the first 400 cars and 11.75% for the second 425 cars, payable over 5 years beginning 6 months after the first 12

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months of delivery (i.e., a slightly better repayment period than that offered by the French).

21. In order to encourage the competing carbuilders to make the most of financing sources available to them, MTA decided first to negotiate financing and later to require submissions of lowest car prices.

22. The MTA never showed the competitors the offers and documents submitted by other competitors. They did, however, inform the competitors orally of where they stood. Thus, as part of such oral transmissions, the MTA attempted to persuade Bombardier to match Francorail's low interest rates and to persuade Francorail to finance 85% of the entire contract price, as offered by Bombardier. Throughout the negotiations, Budd was advised that its financing terms were not competitive. Budd was further advised that, although its car price was lower than its competitors, Bombardier and Francorail could be expected to make substantial reductions on that item.

23. During the course of the negotiations, the relative financial value of the offers was determined primarily by a combination of weighted factors (including price, payment schedule, escalation, delivery schedule, etc.). The Morgan Guaranty Trust Co., which acted as financial adviser to MTA in this transaction, composed a matrix of these factors and a computer program which

synthesized all these components into a single term called the "Net Present Value" ("NPV"). Each bidder was told the precise factors and methodology utilized by the MTA in formulating the NPV of a given offer. Moreover, MTA offered each bidder access to Morgan Guaranty's computer facilities so that it could recalculate the new NPV which would result from a modification of the terms of its offer. Although the competitors were not informed of the NPV figures for the other competitors, the offerors who were in second and third place were told of the approximate percentage difference of their NPV's from the NPV of the "leader".

24. During the early weeks of May 1982 negotiation of financing terms proceeded to a conclusion. Francorail and Bombardier both ultimately offered to provide financing for 85% of the total contract price at a rate of 9.7%, with repayment of up to 15 years beginning after final delivery in 1987. Budd offered financing for only 17% of the contract price in respect of subcomponent manufacture in Portugal (car shell) and Brazil (propulsion and trucks).

25. On May 14, 1982, the MTA requested all bidders to quote their lowest car price offer on May 17, 1982 which would be the close of negotiations on price and financing. The bidders did so, with Budd lowering its price only slightly while

Bombardier and Francorail lowered their prices substantially. As a result Bombardier had a final net present value which was substantially lower than Budd's NPV.

26. Since the NPV's of Bombardier and Francorail were essentially equal, the tie-breaker was the amount of New York State content in the contract. Bombardier had the highest New York State content of all three competitors and its offer therefore was recommended.

27. As between Budd's last and best offer as to price and financing, and the Bombardier proposal, MTA projects an overall interest savings of $95 million over 15 years (assuming an MTA long-term bond rate of 14%), with the peak interest savings of $25 million occurring in 1987.

28. On May 20, 1982 MTA received a telegram from Budd demanding that MTA either award the contract outright to Budd or, alternatively, that MTA refrain from taking further steps toward award of the contract to Bombardier. Budd complained that the Bombardier offer was supported by "unfair foreign financing" and demanded that the MTA halt its evaluation of the Bombardier offer until Budd could apply to the Export-Import Bank for matching financing and initiate a countervailing duty action.

29. On May 26, 1982, MTA published the statutory 15 day notice of public hearing on the offers in the New York Post. Notice of the hearing was also separately mailed to all carbuilders and component manufacturers, including Budd, who made offers. At that hearing, which is scheduled for June 10, 1982, the MTA Board will consider a summary of negotiations prepared by MTA staff and available to the public. The Board will hear testimony on the various offers from interested parties, including Budd if it wishes to participate. It is important to note that this public hearing is a statutorily-required predicate to approval of any such agreement by the MTA Board. As noted above, approval by the PACB is also a statutory condition to award of the contract. The PACB can give actual approval or approval can be statutorily deemed upon expiration of 15 days, as was the case with the Nissho-Iwai award. However, if just one member of the PACB certifies his disapproval to the MTA, than there can be no deemed approval and award can then only be made upon eventual actual approval by the PACB.

30. I respectfully note that the decision to recommend the Bombardier offer and convene a public hearing does not, and by statute could not, represent a final determination and award of the contract by the MTA. Thus, not only has the negotiation process been conducted by MTA with complete propriety, but also

the process has not yet culminated in a final, reviewable determination of the MTA.

WHEREFORE, defendant Metropolitan Transportation Authority respectfully requests that this case be dismissed with prejudice or, alternatively, that plaintiff's motion for preliminary injunctive relief be denied and that this Court grant such other and further relief as it deems proper.

Steven M. Polan, Esq.

Sworn to before me this 28th
day of May, 1982.

Notary Public

TAB F

FINAL STATUS OF B-62 NEGOTIATIONS - May 24, 1982

ITEM	BUDD	BOMBARDIER	FRANCONAIL
Price:	$776,648	$801,40[illegible]	$814,000
NPV/Current Dollars:			
with financing	$552.9M/$809.8M	$520.8M/$1,419.3M	$515.6M/$1,308.2M
w/o financing	$569.3M/$819.2M	$602.1M/ $880.[illegible]M	$583.1M/ $859.1M
of financing	+$16.4M/-$74.9M	+$81.4M/ -$[illegible]0.[illegible]M	+$67.5M/ -$449.1M
Payment Schedule:	[Of Budd's non-financed content]		
	$10,687,000-Contract Signing (1)	5.0%-Contract Signing (1)	7.5%-Contract Signing (1)
	$35,034,000-Month 7 (7)	8.5%-Order Fm Materials (8)	10.0%- + 21 Months (22)
	2.4%-Working Drawings (11)	5.0%-Working Drawing (11)	10.0%- + 27 Months (28)
	$7,705,000-Month 15 (15)	5.0%-First Shell (15)	15.0%- + 31 Months (32)
	5.0%-Sample Car (17)	5.0%-Inst. Uniform Equip. 1st Car (19)	15.0%- + 35 Months (36)
	$16,635,000-Month 27 (27)	6.0%-Completion First Car (23)	15.0%- + 39 Months (40)
	52.0%-Receipt/Material (achdl)	9.0%-Sample Car (24)	10.0%- + 43 Months (44)
	10.0%-Under Frame/Car (+3)	6.0%-Test Train (25)	10.0%- + 47 Months (48)
	5.0%-Shipping/Car (+8)	10.0%-Shipping/Car (+0)	4.5%- Shipping/Car (+2)
	7.0%-Acceptance/Car (-1)	1.97%-Acceptance/40 Cars (+0)	3.0%- Final Acceptance (59)
	3.0%-Final Acceptance (55)	3.0%-Final Acceptance (60)	
Escalation:			
Indices	U.S.	U.S.	French (63.69%), U.S. (36.31%)
% Escalated	90% [60% material/30% labor]	90% [50% material/40% labor]	90%
	100% [60% material/40% labor] (trucks)		U.S. content [60% material/30% labor]
	90% [90% labor] (motors & gearboxes)		French content [6 indices, 90% total]
	91.5% [material, labor, & transportation] (carbodies)		
Base Month	July 81 (Budd, Westinghouse)	July 81	July 81
	December 81 (trucks, carbodies)		
Cap	None	None	6.5% (French content)
Payment & Terms	Labor as per Blue Book Schedule for base purchase. Material coincident with delivery to contractor except for carbodies, trucks, motors, gearboxes, which are to month of shipment of each component.	Monthly on Contractor's disbursements for that month.	Coincident with each payment; adjusted to the index of each payment
Estimated Amount NPV/Current Dollars (8.0%/yr material, 8.5%/yr labor)	$117.1M/$170.4M	$132.2M/$217.2M	$121.8M/$187.6M
Delivery Schedule:			
Sample Car	Month 18	Month 24	Month 24
Test Train	Month 20	Month 25	Month 30
First Car	Month 24	Month 28	Month 31
Full Delivery	Month 31	Month 44	Month 43
Maximum Rate	30 Cars/Month	40 Cars/Month	40 Cars/Month
Last Delivery	Month 54	Month 59	Month 58
Car-Months of service before Jan. '90	40,910	34,975	35,650
Average delivery time	40.41 Months	47.60 Months	46.69 Months

FINAL STATUS OF B-62 NEGOTIATIONS - May 24, 1982

ITEM	BART	BOMBARDIER	FRANCORAIL
Export Credit Financing:			
% Financed (ECP=Exc)	17.0%	85.0%	85.0%
$ Amount Financed	$139.0M	$740.5M	$730.7M
Interest Rate	8.50% (Brazil) 10.25% (Portugal)	9.70%	9.70%
Fees	.5% Management Fee (Portugal) .5% Commitment Fee (Portugal)	.5% Management Fee .5% Commitment Fee in arrears EDC Expenses (not in model)	.5% Management Fee .5% Commitment Fee in advance
Drawdown	On shipment of truck frames, motors, & gearboxes. By fixed payment schedule and balance one month prior to shipment of carbodies.	With each payment excluding 5% downpayment and 10% on shipment	With each payment excluding 7.5% downpayment, 4.5% on shipment, and 3% retained percentage
Repayment	10 equal, semiannual installments beginning in the 54th month or 6 months after shipment of the last carbody, whichever is earlier (Sorefame-Portugal). 11 equal, semiannual installments beginning 33 months after each 6 month period of shipments of motors, gearboxes or trucks (Westinghouse & Villares, Brazil).	20 equal, semiannual installments beginning 6 months after shipment of the last car.	17 equal, semiannual installments beginning 6 months after shipment of the last car
Components:			
Truck	Villares (Brazil) [-$23,237 in price]	Buckeye (U.S.)	Sambre et Meuse (France) [France]
Carbody	Sorefame (Portugal)	Bombardier (Canada) -	
Propulsion	Westinghouse Motors & gearboxes (Brazil)	Westinghouse (N.Y.)	Westinghouse (France & U.S.)
Brakes	WABCO (U.S.) or MYAB (N.Y.)	MYAB (N.Y.)	MYAB (N.Y.)
Truck Assembly	Budd (U.S.)	Bombardier (U.S.)	Sambre et Meuse (France)
B.Y.S. Content:	(See separate MTA memorandum)		
Site Visits:	1/19/82-Mafersa, San Paulo, Brazil 1/22/82-Acerla Bragado, Buenos Aries, Argentina 3/14/82-Sorefame, Lisbon, Portugal 4/14/82-Martinsville, Virginia	12/7/81-La Pocatiere, Quebec, Canada 12/8/81-Barre, Vermont	1/ 8/82-Creusot-Loire, France 1/ 9/82-Jeumont-Schneider, Haubeuge, France 1/ 9/82-AMF Foundry, Sambre et Meuse, France 1/ 9/82-AMF Company, Creapeay, France 1/11/82-Carrel-Fouche, Gaillon, France 1/11/82-Jeumont-Schneider, Le Plante Saint Dennis, France 1/12/82-WABCO (France), Paris France

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6/8/82

SUMMARY OF NEGOTIATIONS AND PROPOSED AGREEMENT

BETWEEN THE MTA AND BOMBARDIER INC.

825 IRT SUBWAY CARS

MTA negotiated with The Budd Co., Francorail of France, and Bombardier Inc. of Canada for 825 IRT Subway Cars, with the result that Bombardier offered the most favorable proposal on the following terms:

Contracting Parties

MTA, on behalf of the New York City Transit Authority, and Bombardier Inc., as Carbuilder.

Price

Original Offer per car as submitted by Bombardier:	$ 921,000
Final Negotiated Price Per Car:	$ 798,770
Total Contract Price:	$ 658,985,250

(Prices Exclude Escalation)
(Final Negotiated Price Per Car for Nissho Iwai: $844,500)

Delivery Schedule

Delivery of ten car test train in July 1984.
Delivery of all cars by May 1987.

Financing

Loan:	Buyer's Credit from the Export Development Corporation of Canada.
Amount:	85% of Total Contract Price ($560,137,462) plus Escalation.
Interest Rate:	9.7% p.a. fixed
Fees:	Commitment Fee: 0.5% per annum on unused balance. Administrative Fee: 0.5% flat.
Security:	Pari Passu with Bondholders under the MTA Special Obligation Bond Resolution.
Term:	A term loan borrowed coincident with progress payments made under the contract and repaid in 20 equal semi-annual installments, beginning 6 months after shipment of all cars, with the final maturity of the loan in 1997.

New York State Content

Minimum of $125,600 per car (16% of car price) excluding transportation and on-site staffing. Major components include motor system components, air brakes, and certain air-conditioning components. Efforts to continue to raise N.Y. content to $160,000 per car (20% of car price).

Other U.S. Content

Additional major components include air conditioning system and trucks. Final assembly will be in Barre, Vermont.

Specifications

Stainless Steel, graffiti resistant, air conditioned, single car units 51'4" long, 8'9" wide, estimated weight 80,000 lbs. per car.

License Agreement

Car design and engineering licensed to Bombardier, Inc. by Kawasaki Heavy Industries, Ltd.

Conditions

Subject to approval of MTA Board, N.Y.S. Public Authorities Control Board, Export Development Corporation of Canada.

Summary of Other Carbuilder Offers

Budd Company

Original Bid:	$941,000 per car
Final Negotiated Price:	$799,885 per car (This price assumes certain contractual provisions for final payment and the use of certain N.Y.S. components which were required by MTA and contained in the Bombardier and Francorail proposals. Additionally, a price reduction of $23,337 per car would be available if the Villares truck passes NYCTA qualification tests.)
Financing:	17% of contract price representing a portion of the value of trucks and propulsion equipment manufactured in Brazil and carshells manufactured in Portugal. Brazil Financing at 8.5% with repayment over nine years. Portugal Financing at 10.25% with repayment over 5 1/2 years.

Final Delivery:	October 1986 (This date does not take account of Budd's insistence in the event of NYS assembly that liquidated damages be waived for the first two months of delay.)
N.Y.S. Content:	12% of Car Cost

Francorail

Original Offer:	$867,000 per car
Final Negotiated Price:	$814,000 per car
Final Delivery:	April 1987
Amount Financed:	85% of Contract Price at rate and with repayment term comparable to Bombardier proposal.
N.Y.S. Content:	8% of Car Cost

.097,20
BASE PRICE PER CAR IS $803,484.85
BOMBARDIER CONTRACT
THERE ARE 34.975 CAR MONTHS OF SERVI
662,874,999 803,484 092,760
THE INTEREST RATE IS 9.7000 THE EFFECTIVE INTEREST RATE IS 9.97 %
BOMBARDIER AGREEMENT

TOTAL PRICE -	$1,419,054,173
TOTAL PRICE WITHOUT FINANCING -	$880,534,324
NET PRESENT VALUE -	$520,326,239
NET PRESENT VALUE WITHOUT FINANCING -	$402,129,684
NET PRESENT VALUE OF FINANCING -	$81,803,744
CURRENT DOLLAR VALUE ESCALATION -	$217,459,324
NET PRESENT VALUE OF ESCALATION -	$132,705,261

85.0 % OF CONTRACT FINANCED

RATE %	W FIN	B/D FIN	NON FIN	PRIN	INTEREST
0 %	$1,419,054	$880,534	$132,080	$748,452	$538,521
1 %	$1,306,810	$855,090	$128,292	$676,550	$501,966
2 %	$1,205,549	$830,670	$124,671	$612,345	$468,511
3 %	$1,114,054	$807,226	$121,208	$554,992	$437,852
4 %	$1,031,257	$784,712	$117,895	$503,641	$409,719
5 %	$956,218	$763,084	$114,725	$457,620	$383,872
6 %	$888,108	$742,300	$111,691	$416,323	$360,093
7 %	$826,194	$722,322	$108,786	$379,217	$338,191
8 %	$769,832	$703,111	$106,004	$345,835	$317,992
9 %	$718,448	$684,634	$103,339	$315,766	$299,343
10 %	$671,536	$666,856	$100,785	$288,647	$282,103
11 %	$628,646	$649,746	$98,338	$264,159	$266,147
12 %	$589,378	$633,273	$95,992	$242,021	$251,364
13 %	$553,377	$617,410	$93,742	$221,982	$237,651
14 %	$520,326	$602,129	$91,585	$203,823	$224,917
15 %	$489,943	$587,405	$89,514	$187,348	$213,080
16 %	$461,976	$573,213	$87,528	$172,383	$202,064
17 %	$436,200	$559,530	$85,621	$158,776	$191,802
18 %	$412,412	$546,334	$83,790	$146,389	$182,232
19 %	$390,432	$533,603	$82,032	$135,099	$173,299
20 %	$370,097	$521,319	$80,343	$124,800	$164,952

	MONTH	PAYMENTS	NON FIN	PRINCIPAL	INTEREST	BALANCE	ESCALATION	CAR
001	JUL 82	$37,198,187	$33,144,070		$4,054,116	$1,816	$2,136	0
002	AUG 82					$1,816		0
003	SEP 82	$356	$356			$3,825	$2,373	0
004	OCT 82	$1,142	$1,142			$10,310	$7,617	0
005	NOV 82	$1,248	$1,248			$17,383	$8,321	0
006	DEC 82	$2,227	$1,942		$284	$28,393	$12,953	0
007	JAN 83	$1,881,956	$10,851		$1,871,104	$89,887	$72,346	0
008	FEB 83	$86,115	$86,115			$56,922,249	$574,102	0
009	MAR 83	$1,177,807	$1,177,807			$63,396,490	$7,852,048	0
010	APR 83	$13,485	$13,485			$63,672,907	$89,901	0
011	MAY 83	$17,744	$17,744			$63,773,570	$118,427	0
012	JUN 83	$2,945,190	$59,848		$2,885,341	$64,112,714	$390,993	0
013	JUL 83	$1,761,246	$20,184		$1,741,060	$97,370,852	$134,573	0
014	AUG 83	$19,293	$19,293			$97,480,180	$128,621	0
015	SEP 83	$22,353	$22,353			$130,750,597	$149,020	0
016	OCT 83	$41,361	$41,361			$130,984,979	$275,742	0
017	NOV 83	$44,793	$44,793			$131,238,804	$298,620	0
018	DEC 83	$5,317,879	$48,046		$5,269,833	$131,511,071	$320,311	0
019	JAN 84	$1,424,159	$52,752		$1,371,407	$164,953,751	$351,681	0
020	FEB 84	$54,328	$54,328			$165,241,410	$362,187	0

021	MAR	84	877,866	877,866			8165,702,854	8519,110	0	
022	APR	84	647,142	647,142			8165,969,993	8314,281	0	
023	MAY	84	649,349	649,349			8206,022,142	8328,998	0	
024	JUN	84	98,366,866	8280,209		98,078,656	8267,314,079	81,921,396	0	
025	JUL	84	92,253,441	8855,328		81,398,120	8307,380,316	8345,572	10	
026	AUG	84	854,433	854,433			8307,688,775	8362,892	0	
027	SEP	84	8346,421	8346,421			8309,451,832	82,309,479	0	
028	OCT	84	8913,447	8913,447			8313,004,803	83,947,024	4	
029	NOV	84	8474,724	8474,724			8313,875,670	81,022,205	4	
030	DEC	84	815,122,550	8419,633		814,702,916	8314,432,370	8454,931	4	
031	JAN	85	82,607,041	81,513,425		81,093,615	8318,455,367	84,732,937	10	
032	FEB	85	8983,879	8983,879			8332,560,444	81,202,632	10	
033	MAR	85	81,516,940	81,516,940			8336,603,580	84,756,372	10	
034	APR	85	81,014,237	81,014,237			8337,797,847	81,405,020	10	
035	MAY	85	81,586,735	81,586,735			8342,236,269	85,221,672	10	
036	JUN	85	817,048,267	81,046,405		816,021,862	8356,695,877	81,619,468	10	
037	JUL	85	83,505,402	82,477,750		81,027,651	8361,630,299	85,805,293	20	
038	AUG	85	81,864,187	81,864,187			8376,170,924	81,714,783	20	
039	SEP	85	82,496,870	82,496,870			8381,213,497	85,932,673	20	
040	OCT	85	81,983,236	81,983,236			8394,428,934	82,508,444	20	
041	NOV	85	81,921,089	81,921,089			8398,208,947	82,096,132	20	
042	DEC	85	820,990,527	82,638,542		818,351,985	8417,137,584	86,877,150	20	
043	JAN	86	83,735,451	82,835,483		8899,968	8424,099,159	88,190,088	29	
044	FEB	86	83,656,757	83,656,757			8446,244,684	88,308,688	30	
045	MAR	86	83,689,081	83,689,081			8464,573,218	88,524,181	30	
046	APR	86	84,364,213	84,364,213			8484,174,497	87,468,494	40	
047	MAY	86	84,619,888	84,619,888			8505,224,148	89,372,661	40	
048	JUN	86	824,793,243	84,649,349		822,143,913	8526,441,200	89,569,402	40	
049	JUL	86	85,411,355	84,727,204		8684,148	8548,099,438	810,088,445	40	
050	AUG	86	84,760,951	84,760,951			8569,948,990	810,313,415	40	
051	SEP	86	84,795,322	84,795,322			8591,993,130	810,542,553	40	
052	OCT	86	84,831,129	84,831,129			8614,240,269	810,781,270	40	
053	NOV	86	84,773,809	84,773,809			8636,162,592	810,399,134	40	
054	DEC	86	833,148,248	84,962,598		828,185,658	8659,154,673	811,457,673	40	
055	JAN	87	84,613,730	84,252,766		8362,964	8678,124,819	84,925,512	40	
056	FEB	87	84,114,935	84,114,935			8696,313,125	84,906,643	40	
057	MAR	87	84,135,021	84,135,021			8714,615,650	84,140,547	40	
058	APR	87	84,155,483	84,155,483			8719,951,068	84,276,962	40	
059	MAY	87	82,238,356	82,238,356			8722,143,005	82,402,270	23	
060	JUN	87	834,732,581	81,040,812		833,671,769	8740,040,524	87,072,082	0	
061	JUL	87	8141,850	853,730		888,119	8740,344,998	8358,204	0	
062	AUG	87	815,737	815,737			8740,454,176	8104,914	0	
063	SEP	87					8740,454,176		0	
064	OCT	87					8740,454,176		0	
065	NOV	87	867,668,738		837,422,617	830,246,120	8711,031,550		0	
066	DEC	87					8711,031,550		0	
067	JAN	88	832			832	8711,031,550		0	
068	FEB	88					8711,031,550		0	
069	MAR	88					8711,031,550		0	
070	APR	88					8711,031,550		0	
071	MAY	88	871,907,648		837,422,617	834,485,030	8673,608,940		0	
072	JUN	88					8673,608,940		0	
073	JUL	88	-84			-84	8673,608,940		0	
074	AUG	88					8673,608,940		0	
075	SEP	88					8673,608,940		0	
076	OCT	88					8673,608,940		0	
077	NOV	88	870,092,651		837,422,617	832,670,033	8636,186,322		0	
078	DEC	88					8636,186,322		0	
079	JAN	89	-84			-84	8636,186,322		0	
080	FEB	89					8636,186,322		0	
081	MAR	89					8636,186,322		0	
082	APR	89					8636,186,322		0	
083	MAY	89	868,277,654		837,422,617	830,855,036	8598,763,704		0	
084	JUN	89					8598,763,704		0	
085	JUL	89	-84			-84	8598,763,704		0	
086	AUG	89					8598,763,704		0	

087	SEP	89				$598,763,704	0	
088	OCT	89				$598,763,704	0	
089	NOV	89	$66,462,657	$37,422,617	$29,040,039	$541,341,084	0	
090	DEC	89				$541,341,084	0	
091	JAN	90	-$4		-$4	$541,341,084	0	
092	FEB	90				$541,341,084	0	
093	MAR	90				$541,341,084	0	
094	APR	90				$541,341,084	0	
095	MAY	90	$64,647,660	$37,422,617	$27,225,042	$523,918,468	0	
096	JUN	90				$523,918,468	0	
097	JUL	90	-$4		-$4	$523,918,468	0	
098	AUG	90				$523,918,468	0	
099	SEP	90				$523,918,468	0	
100	OCT	90				$523,918,468	0	
101	NOV	90	$62,832,663	$37,422,617	$25,410,045	$486,495,850	0	
102	DEC	90				$486,495,850	0	
103	JAN	91	-$4		-$4	$486,495,850	0	
104	FEB	91				$486,495,850	0	
105	MAR	91				$486,495,850	0	
106	APR	91				$486,495,850	0	
107	MAY	91	$61,017,666	$37,422,617	$23,595,048	$449,073,232	0	
108	JUN	91				$449,073,232	0	
109	JUL	91	-$4		-$4	$449,073,232	0	
110	AUG	91				$449,073,232	0	
111	SEP	91				$449,073,232	0	
112	OCT	91				$449,073,232	0	
113	NOV	91	$59,202,669	$37,422,617	$21,780,051	$411,650,614	0	
114	DEC	91				$411,650,614	0	
115	JAN	92	-$4		-$4	$411,650,614	0	
116	FEB	92				$411,650,614	0	
117	MAR	92				$411,650,614	0	
118	APR	92				$411,650,614	0	
119	MAY	92	$57,387,672	$37,422,617	$19,965,054	$374,227,996	0	
120	JUN	92				$374,227,996	0	
121	JUL	92	-$4		-$4	$374,227,996	0	
122	AUG	92				$374,227,996	0	
123	SEP	92				$374,227,996	0	
124	OCT	92				$374,227,996	0	
125	NOV	92	$55,572,675	$37,422,617	$18,150,057	$336,805,378	0	
126	DEC	92				$336,805,378	0	
127	JAN	93	-$4		-$4	$336,805,378	0	
128	FEB	93				$336,805,378	0	
129	MAR	93				$336,805,378	0	
130	APR	93				$336,805,378	0	
131	MAY	93	$53,757,678	$37,422,617	$16,335,060	$299,382,760	0	
132	JUN	93				$299,382,760	0	
133	JUL	93	-$4		-$4	$299,382,760	0	
134	AUG	93				$299,382,760	0	
135	SEP	93				$299,382,760	0	
136	OCT	93				$299,382,760	0	
137	NOV	93	$51,942,681	$37,422,617	$14,520,063	$261,960,142	0	
138	DEC	93				$261,960,142	0	
139	JAN	94	-$4		-$4	$261,960,142	0	
140	FEB	94				$261,960,142	0	
141	MAR	94				$261,960,142	0	
142	APR	94				$261,960,142	0	
143	MAY	94	$50,127,684	$37,422,617	$12,705,066	$224,537,524	0	
144	JUN	94				$224,537,524	0	
145	JUL	94	-$4		-$4	$224,537,524	0	
146	AUG	94				$224,537,524	0	
147	SEP	94				$224,537,524	0	
148	OCT	94				$224,537,524	0	
149	NOV	94	$48,312,687	$37,422,617	$10,890,069	$187,114,906	0	
150	DEC	94				$187,114,906	0	
151	JAN	95	-$4		-$4	$187,114,906	0	
152	FEB	95				$187,114,906	0	

153	MAR 95					$187,114,986	0
154	APR 95					$187,114,986	0
155	MAY 95	$46,497,690		$37,422,617	$9,075,072	$149,492,288	0
156	JUN 95					$149,492,288	0
157	JUL 95	-$4			-$4	$149,492,288	0
158	AUG 95					$149,492,288	0
159	SEP 95					$149,492,288	0
160	OCT 95					$149,492,288	0
161	NOV 95	$44,682,693		$37,422,617	$7,260,075	$112,249,670	0
162	DEC 95					$112,249,670	0
163	JAN 96	-$4			-$4	$112,249,670	0
164	FEB 96					$112,249,670	0
165	MAR 96					$112,249,670	0
166	APR 96					$112,249,670	0
167	MAY 96	$42,867,696		$37,422,617	$5,445,079	$74,847,052	0
168	JUN 96					$74,847,052	0
169	JUL 96	-$4			-$4	$74,847,052	0
170	AUG 96					$74,847,052	0
171	SEP 96					$74,847,052	0
172	OCT 96					$74,847,052	0
173	NOV 96	$41,052,700		$37,422,617	$3,630,082	$37,424,434	0
174	DEC 96					$37,424,434	0
175	JAN 97	-$4			-$4	$37,424,434	0
176	FEB 97					$37,424,434	0
177	MAR 97					$37,424,434	0
178	APR 97					$37,424,434	0
179	MAY 97	$39,237,703		$37,422,617	$1,815,085	$1,816	0
180	JUN 97					$1,816	0
181	JUL 97	-$4			-$4	$1,816	0
182	AUG 97					$1,816	0
	TOTALS	$1,419,054,173	$132,000,148	$748,452,359	$538,521,664	$149,492,288	$217,639,324

PREPARED BY D.M. ZIEGELHEIM
CAR MAINTENANCE ENGINEERING
NEW YORK CITY TRANSIT AUTHORITY

ADJUSR PAPER, CR....

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RUN

BUDD12      17:43   05/21/82  FRIDAY     IBM-41

 BUDD - $440,270   PORTUGAL - $49,022 BRAZIL $29,309  MEXICO - $57,474  GEARBOXES -      $0
  SAMPLE CAN PAYMENT IS $30,387,345  WHICH IS 5.75 % OF DCP
THE AVERAGE NUMBER OF MONTHS BEFORE DELIVERY IS 40.41

   DDDD  U    U DDDD  DDDD        RRRRR     AAAA  22222
   D   D U    U D   D D   D       R   R    A    A      2
   DDDD  U    U D   D D   D       RRRRR -- A AAA    22
   D   D U    U D   D D   D       R  R     AA  A   2
   DDDD   UUUU  DDDD  DDDD        R   R    AAAAA  22222



THE NET PRESENT VALUE IS                                          $352,944,902
THE NET PRESENT VALUE WITHOUT FINANCING IS                        $349,311,945
THE NET PRESENT VALUE OF FINANCING IS                               $16,367,042
THE CURRENT DOLLAR COST IS                                        $893,435,519
THE CURRENT DOLLAR COST W/O FINANCING IS                          $819,173,219
THE CURRENT DOLLAR COST OF FINANCING IS                           -$74,462,299
THE AMOUNT FINANCE IS                                             $138,970,817
THE NET PRESENT VALUE OF ESCALTION IS                             $117,087,441
THE CURRENT DOLLAR COST OF ESCALATION IS                          $178,438,944
     THE PERCENT FINANCED IS 17.0 %


  DATE  %    W FIN       W/O FIN     WDN FIN   PRIN       INTEREST

     0 %      $893,435    $819,173    $680,202  $138,970    $74,462
     1 %      $859,373    $796,877    $661,760  $127,597    $70,067
     2 %      $827,136    $775,384    $644,004  $117,256    $65,874
     3 %      $796,767    $754,667    $626,880  $107,845    $62,041
     4 %      $768,122    $734,684    $610,370   $99,273    $58,479
     5 %      $741,072    $715,412    $594,447   $91,450    $55,166
     6 %      $715,498    $696,816    $579,087   $84,327    $52,083
     7 %      $691,293    $678,868    $564,265   $77,815    $49,211
     8 %      $668,339    $661,549    $549,961   $71,849    $46,526
     9 %      $646,497    $644,816    $536,151   $66,419    $44,036
    10 %      $625,955    $628,668    $522,816   $61,435    $41,703
    11 %      $606,328    $613,084    $509,937   $56,860    $39,523
    12 %      $587,659    $597,974    $497,494   $52,680    $37,494
    13 %      $569,883    $583,498    $485,471   $48,836    $35,575
    14 %      $552,944    $569,311    $473,849   $45,307    $33,787
    15 %      $536,789    $555,689    $462,615   $42,062    $32,111
    16 %      $521,368    $542,515    $451,751   $39,078    $30,539
    17 %      $506,637    $529,770    $441,243   $36,331    $29,063
    18 %      $492,554    $517,429    $431,077   $33,800    $27,676
    19 %      $479,088    $505,506    $421,241   $31,467    $26,372
    20 %      $466,181    $493,955    $411,720   $29,315    $25,145

MONTH      PAYMENTS    WDN-FIN      PRINCIPAL     INTEREST      BALANCE       ESCALATION    CAN
JUL 82       $18,944     $18,667                      $277                                     0
AUG 82                                                                                        0
SEP 82                                                                                        0
OCT 82         $761        $761                                                      $53      0
NOV 82         $766        $766                                                      $36      0
DEC 82         $912        $783                      $128                            $72      0
JAN 83      $23,985     $23,985                                                   $1241      0
FEB 83         $795        $795                                                      $83      0
MAR 83          $11         $11                                          $6,758       $11      0
APR 83        $408        $408                                          $6,792      $408      0
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[illegible]	83	91,948	91,967			92,874	621	0
JAN	83	8120			8120	93,531	949	0
JUL	83	8940	8940			94,117	91,003	0
AUG	83					94,710	670	0
SEP	83	97,959	97,705		8254	97,308	975	0
OCT	83	95,108	95,108			97,962	92,687	0
NOV	83	93,118	93,064		854	915,076	9482	0
DEC	83	832,981	832,872		8109	916,972	9574	0
JAN	84	94,568	94,568			918,078	92,667	0
FEB	84	92,833	92,833			919,193	8621	10
MAR	84	94,981	94,448		8541	920,349	91,201	0
APR	84	910,377	910,377			921,684	92,954	0
MAY	84	97,213	98,986		8226	923,260	91,799	0
JUN	84	99,224	99,238		893	924,963	91,910	5
JUL	84	912,270	912,270			931,939	96,675	10
AUG	84	910,273	910,273			934,995	92,183	20
SEP	84	928,598	927,741		8836	937,075	92,337	20
OCT	84	914,857	914,857			939,674	93,287	20
NOV	84	915,786	915,234		8552	943,788	93,425	20
DEC	84	917,875	917,866		874	946,393	93,947	20
JAN	85	919,946	919,946			950,352	97,233	20
FEB	85	914,918	914,918			954,349	94,235	20
MAR	85	918,567	917,323		91,183	963,132	94,355	30
APR	85	920,232	920,232			967,182	97,441	30
MAY	85	918,871	916,893		91,177	971,259	94,328	30
JUN	85	917,824	916,969		854	975,361	94,430	30
JUL	85	920,779	920,779			979,490	98,266	30
AUG	85	917,154	917,154			983,643	94,667	30
SEP	85	918,944	917,247		91,696	987,827	94,787	30
OCT	85	921,733	921,733			992,036	99,827	30
NOV	85	919,803	917,818		91,981	8101,830	95,139	30
DEC	85	917,954	917,921		832	8105,293	95,269	30
JAN	86	922,332	922,332			8109,584	99,708	30
FEB	86	917,727	917,727			8113,902	95,403	30
MAR	86	919,978	917,824		92,154	8118,247	95,528	30
APR	86	922,535	922,535			8122,621	910,267	30
MAY	86	920,826	918,814		92,811	8127,023	95,774	30
JUN	86	918,122	918,113		99	8131,453	95,901	30
JUL	86	924,493	923,184	8222	91,125	8135,664	910,960	30
AUG	86	918,312	918,312			8130,651	95,761	30
SEP	86	94,963	94,424		92,561	8138,708	8254	30
OCT	86	97,756	97,756			8138,748	95,490	36
NOV	86	92,305	92,305			8138,748		30
DEC	86	99,268	94,404	92,862		8135,885	94,101	30
JAN	87	924,950	920,566	8697	93,686	8135,188		0
FEB	87					8135,188		0
MAR	87	92,566			92,566	8135,188		0
APR	87					8135,188		0
MAY	87					8135,188		0
JUN	87	94,108		92,862	91,266	8132,326		0
JUL	87	95,298		91,620	93,677	8130,705		0
AUG	87					8130,705		0
SEP	87					8130,705		0
OCT	87					8130,705		0
NOV	87					8130,705		0
DEC	87	95,209		92,862	92,346	8127,843		0
JAN	88	94,832		93,223	93,600	8124,619		0
FEB	88					8124,619		0
MAR	88					8124,619		0
APR	88					8124,619		0
MAY	88					8124,619		0
JUN	88	95,662		92,862	92,200	8121,757		0
JUL	88	98,641		94,979	93,671	8116,787		0
AUG	88					8116,787		0
[illegible]	[illegible]					8116,787		0
[illegible]	[illegible]					[illegible]		0

96-531 O—82——7

NOV 88				9116.787	0
DEC 88	84.915	82.842	82.853	9113.925	0
JAN 89	810.827	86.767	83.260	9107.157	0
FEB 89				9107.157	0
MAR 89				9107.157	0
APR 89				9107.157	0
MAY 89				9107.157	0
JUN 89	84.769	82.862	81.906	9104.295	0
JUL 89	810.923	87.950	82.972	894.345	0
AUG 89				894.345	0
SEP 89				894.345	0
OCT 89				894.345	0
NOV 89				894.345	0
DEC 89	84.622	82.862	81.760	893.483	0
JAN 90	810.585	87.950	82.634	885.533	0
FEB 90				885.533	0
MAR 90				885.533	0
APR 90				885.533	0
MAY 90				885.533	0
JUN 90	84.475	82.862	81.613	882.671	0
JUL 90	810.247	87.950	82.297	874.720	0
AUG 90				874.720	0
SEP 90				874.720	0
OCT 90				874.720	0
NOV 90				874.720	0
DEC 90	84.329	82.862	81.466	871.858	0
JAN 91	89.909	87.750	81.959	863.908	0
FEB 91				863.908	0
MAR 91				863.908	0
APR 91				863.908	0
MAY 91				863.908	0
JUN 91	84.182	82.862	81.320	861.046	0
JUL 91	89.571	87.950	81.621	853.096	0
AUG 91				853.096	0
SEP 91				853.096	0
OCT 91				853.096	0
NOV 91				853.096	0
DEC 91	84.035	82.862	81.173	850.234	0
JAN 92	89.010	87.727	81.283	842.586	0
FEB 92				842.586	0
MAR 92				842.586	0
APR 92				842.586	0
MAY 92				842.586	0
JUN 92	83.888	82.862	81.026	839.644	0
JUL 92	88.267	87.252	6955	832.391	0
AUG 92				832.391	0
SEP 92				832.391	0
OCT 92				832.391	0
NOV 92				832.391	0
DEC 92	83.742	82.862	6880	829.529	0
JAN 93	86.976	86.329	6846	823.200	0
FEB 93				823.200	0
MAR 93				823.200	0
APR 93				823.200	0
MAY 93				823.200	0
JUN 93	83.595	82.862	6733	820.338	0
JUL 93	85.104	84.726	6377	815.611	0
AUG 93				815.611	0
SEP 93				815.611	0
OCT 93				815.611	0
NOV 93				815.611	0
DEC 93	83.448	82.862	6586	812.749	0
JAN 94	83.156	82.980	6176	89.769	0
FEB 94				89.769	0
MAR 94				89.769	0
[illegible]				89.769	0

MAY 94				$7,769		0
JUN 94	$3,303		$2,862	$440	$6,907	0
JUL 94	$1,233		$1,182	$50	$5,724	0
AUG 94					$5,724	0
SEP 94					$5,724	0
OCT 94					$5,724	0
NOV 94					$5,724	0
DEC 94	$3,155		$2,862	$293	$2,862	0
JAN 95					$2,862	0
FEB 95					$2,862	0
MAR 95					$2,862	0
APR 95					$2,862	0
MAY 95					$2,862	0
JUN 95	$3,000		$2,862	$138		0
JUL 95						0
AUG 95						0
SEP 95						0
OCT 95						0
NOV 95						0
DEC 95						0
JAN 96						0
FEB 96						0
MAR 96						0
APR 96						0
MAY 96						0
JUN 96						0
JUL 96						0
AUG 96						0
SEP 96						0
OCT 96						0
NOV 96						0
DEC 96						0
JAN 97						0
FEB 97						0
MAR 97						0
APR 97						0
MAY 97						0
JUN 97						0
JUL 97						0
AUG 97						0
SEP 97						0
OCT 97						0
NOV 97						0
DEC 97						0
JAN 98						0
FEB 98						0
MAR 98						0
APR 98						0
MAY 98						0
JUN 98						0
JUL 98						0
AUG 98						0
SEP 98						0
OCT 98						0
NOV 98						0
DEC 98						0
JAN 99						0
FEB 99						0
TOTALS	$893,635	$680,202	$138,970	$74,462	$178,438	825

PREPARED BY DAVID M. ZIEGELHEIM
CAR MAINTENANCE ENGINEERING
NEW YORK CITY TRANSIT AUTHORITY

TAB H

TESTIMONY OF RICHARD RAVITCH

CHAIRMAN, METROPOLITAN TRANSPORTATION AUTHORITY

Good morning. My name is Richard Ravitch and I am Chairman of the Metropolitan Transportation Authority of New York. I am the chief executive officer of an independent public authority which is responsible for the operation of the largest public transportation system in the United States, one which serves some 5.5 million riders daily, including 85% of all peak hour travellers entering Manhattan's Central Business District. Between our various operations, which include the New York City subway and bus system, the Long Island Rail Road, and the commuter services now operated by Conrail in our northern and western suburbs, we carry fully one-third of the nations public transit riders.

In my two and one-half years as Chairman, our efforts have focused on establishing a sound financial base for rebuilding the physical infrastructure of this immense regional transportation network. The physical assets of the MTA system — which are conservatively valued at $55 billion exclusive of real estate and rights-of-way — are now in a severe state of disrepair. This situation results from years of capital disinvestment and neglect. As a consequence, these systems are now strained to carry the numbers of people who depend on their operation. Poor transit service adversely affects the region's economy: its employment; its sales; its productivity, and the decision of its businesses about plant and headquarters locations.

Last year MTA and New York State confronted these severe transportation problems by putting in motion an extraordinary local financing plan which contemplates spending nearly $8 billion over five years to rebuild the MTA system. Recognizing that the new Administration in Washington views public transit as a local responsibility, we accepted the challenge and formulated a plan that represents a unique attempt to use local resources to solve the capital needs of urban public transportation. Rather than relying solely on the federal capital assistance program, which represents the sustenance of every other transit property in this country, we asked that New York State authorize local taxpayers and local farepayers to assume the repayment of over $3 billion of debt to be issued over the next five years. This debt will result in either higher fares or higher taxes or both, but we in New York recognized that reliable and safe public transportation was well worth this price.

The key element of our rebuilding plan is the replacement of overaged subway cars and the purchase of new commuter cars. We had planned to replace 1,375 subway cars and purchase 316 new commuter rail cars. The projected cost of these purchases amounts to nearly $2 billion.

To help support this mammoth equipment acquisition and construction program we asked only one thing of the federal government: to accord public transportation the same tax treatment and the same tax benefits as exist for every other form of transportation.

We thought this proposal to be consistent with the President's call to create a partnership between the private and public sectors in solving urban problems. We pointed out that when Congress enacted the investment tax credit in 1962, it was not made available for equipment used by the public sector on the theory that the public's demand for capital goods is inelastic, and this tax incentive was therefore not likely to spur increased production. Last year we were able to demonstrate to the satisfaction of Congress that this was not true in the case of the MTA. Congress responded by providing, as part of the Economic Recovery Tax Act of 1981, the benefits of ACRS deductions through safe harbor leasing for locally financed public transit rolling stock. This new provision of law provided MTA an economic benefit equivalent to what it originally sought, but still less than private transportation which also has the benefit of investment tax credit.

With a financing program in place, MTA set about the task of contracting for the purchase of rolling stock. While I appreciate that the Committee is most interested in the recent announcement of a proposed contract for 825 subway cars to Bombardier of Canada, it is important to place this proposed award, which is still subject to a public hearing and approval by both the MTA Board and the N.Y.S. Public Authorities Control Board, in the context of the events and decisions which preceded it.

First, MTA took competitive bids for the purchase of 130 commuter rail cars, with options for additional cars in the event MTA's proposed financing program was fully realized. This contract was awarded to the Budd Co.; the options for an additional 186 cars were subsequently exercised, and MTA expects first delivery of its $400 million commuter car order from Budd in the fall of this year.

Second, MTA sought competitive bids for 325 subway cars, with options requested for up to 1,150 cars in total. Bids were received from Nissho Iwai American Corporation, representing Kawasaki Heavy Industries, and the Budd Co. Nissho Iwai submitted the low bid of $895,000 per car. Had MTA chosen to use the Federal funds, it would have been forced by Federal procurement regulations to award to Kawasaki on the basis of its bid.

However, in MTA's judgment the Nissho Iwai low bid was excessive and the Budd Company's high bid of $941,000 per car even more so. Questions were also raised at that time as to MTA's ability to sell bonds in the amounts required to fund payments for a full contract of 1,150 cars. MTA then proposed State legislation to authorize negotiation for the purchase of subway cars. We sought this authority for two reasons: first, to reduce the price of the cars, and second, to attract vendor-related financing on favorable terms to assure that payments under any subway car contract could be met. In October 1981 New York State authorized MTA to award subway contracts by negotiation, establishing as statutory criteria for award the factors of price, financing, delivery schedule, and New York State economic activity to be generated by a proposed contract.

MTA subsequently negotiated with both Nissho Iwai and Budd for the first 325 subway cars. Nissho Iwai offered a more competitive proposal with respect to each of the four statutory factors identified in our State enabling legislation. The final award to Nissho Iwai was for $844,500 per car, with associated financing of approximately half the value of the contract at an effective interest cost to MTA of 12.25%.

We then proceeded to negotiate for the award of the balance of the planned order - 825 cars - with Budd and two other firms which had submitted offers in response to our new request for proposals: Bombardier of Canada and Francorail of France. Regrettably, MTA was unsuccessful in urging the Pullman Company to reenter the car building business and compete for this procuremnt. We understood from the outset that Budd would be somewhat disadvantaged with respect to its competitive position insofar as government-related financing was available, so we suggested an alternative form of financing that could be made available to support its bid. We suggested that Budd's parent corporation, Thyssen of West Germany, provide its credit to assist Budd in matching foreign competition. Access to Thyssen's credit would have provided MTA some of the same benefits as the ex-im vendor-related financing, to wit: security of financing source, flexibility with respect to MTA's ability to enter the long-term market during more favorable market conditions, and a short-term reduction in the amount of overall New York public financing (including City and State financing) competing for limited investor capital. This request was refused.

With respect to the actual offers made by the three companies, both Francorail and Bombardier offered approximately equal financing terms, including financing of 85% of contract price, a 9.7% interest rate, and repayment over ten years. Budd offered financing for approximately 17% of the contract value, representing a portion of the value of propulsion equipment, undercarriages and carshells to be produced in Brazil and Portugal.

The absence of sufficient financing associated with the Budd offer made its proposal non-competitive. Without an offer of Thyssen or other Budd-related credit, and, without MTA's bonds yet having been sold, we were not in a position to commit to a contract requiring payments from our own farebox revenues of $600-$800 million within five years.

As significant as its was, however, the lack of favorable financing terms was not, itself, the only factor that led us to recommend Bombardier.

There were other considerations taken into account in MTA's decision. First, as a matter of prudent business judgment, MTA had considerable concern in placing so much of the responsibility for its five-year program in any one single company. As noted before, MTA has already committed to Budd for the manufacture of 316 commuter cars, a contract which, together with Budd's other commitments, has filled

all production capacity for the foreseeable future at Budd's Red Lion assembly plant. In fact, had Budd succeeded in this contract, assembly would have taken place at a still-to-be equipped facility using a work force yet to be hired or trained. This would have entailed additional risks of delivery and manufacture to MTA.

Second, MTA placed considerable emphasis on the economic impact of this contract to New York State. In this regard, Bombardier committed to spend at least $104 million for components manufactured in New York State, while Budd proposed New York State expenditures of $79 million, including the proposal for final assembly in Hornell, N.Y. Taking account of both the labor intensity of final assembly, and the repeat orders likely to be generated from component assembly, it was the opinion of the New York State Department of Commerce that the Bombardier award would better serve the economic interests of New York State. In fact, as between the French and Canadian offers, Bombardier prevailed because of its emphasis on N.Y.S. content.

Third, the contract price differential between the Bombardier bid and the Budd bid was much smaller than has been suggested. While Budd has cited its low bid as $770,768, well below the Bombardier price of $803,485, the Budd figure does not take into account certain contract provisions, insisted upon by MTA, relating to production risks, payment schedule and use of New York State component supplies which were included in the Bombardier bid. Taking account of these factors, the Budd proposal is more accurately valued at approximately $800,000 per car, or a difference of about .005% from the Bombardier bid.

Fourth, Bombardier had entered into a license agreement with Kawasaki Heavy Industries so that its cars would be substantially identical to the Japanese cars that the MTA has already committed to purchase. Similar engineering offers the advantage of compatability with the other new cars of the MTA fleet with consequent benefits for maintenance, part inventory requirements and the like.

In summary, it is MTA's judgment that the proposed Bombardier award is both in accordance with the statutory criteria established by New York and in the public interest. What is more, it is a transaction of which we at MTA are extraordinarily proud. At a time when long-term tax exempt interest rates are at record highs, and various New York City and State public institutions are competing for limited investor capital, we have secured an alternative source of capital to fund this urgently needed infrastructure improvement. By rejecting the traditional process of competitive bidding in favor of business-like negotiations we have saved the transit riders of New York, who, I repeat, are the only transit riders in this country that are asked to pay for new rolling stock through the farebox, at least $100 million in capital costs (as compared to original "low" bid). By reducing the cost of financing, we have saved on interest charges (assuming an MTA bond rate of 14%) in excess of $90 million over the term of the Financing. In 1987, when our savings peak, we will save every New York City straphanger a nickel a day in commuting costs.

Further, the federal fisc also benefits substantially because, by securing a source of financing outside the traditional tax exempt market, we have reduced the amount of tax exempt bonds that will be available to tax payers.

I recognize that this Committee is concerned about the implications of this contract for the American economy and I appreciate the legitimacy of this concern. Let me address it.

It would be MTA's strong preference to award this and every other rolling stock contract to a domestic manufacturer. However, in the case of the manufacture of subway and commuter cars, there is only one U.S. producer: the Budd Co. We have a long and successful partnership with Budd and hope we can look forward to a continuing relationship. But there is as a practical matter a limited quantity of work that Budd can accept, and a limited amount that MTA is willing to commit to any single manufacturer.

And insofar as the domestic economy is concerned, it is my judgment that this issue has been somewhat distorted by recent press reports. Bombardier has committed to purchase components representing 40% of the car price in the United States, including undercarriages, gears, motors, brakes, air conditioning, and the assembly-related costs which will be incurred in Barre, Vermont. This compares with the buy America requirement, applicable where UMTA funds are involved, of 51%. Let me emphasize that for only 11% difference in the value of domestic content it has been suggested that New York give up 85% financing at 9.7% interest.

Furthermore, New York represents the last major rail city in this country to purchase foreign cars: Boston and Chicago have purchased cars from Canada, Philadelphia and Cleveland from Japan, and Atlanta from France. I have been advised that Pittsburgh is about to award a contract to a German company, and Washington, D.C., the nation's capital, whose funds are provided 100% by this Congress purchased its subway cars from Italy. What is the distinction? Why is New York singled out for obliquey? The difference is that we do not use federal money. All of these other

cars were paid for primarily with federal funds. New York took the U.S. government as its word: "Do not look only to the Federal Government if you want to rebuild your system, find local resources to do the job". We went out and made a business deal — one that the law permits, one that the President's policy encouraged us to make, a deal that is overwhelmingly in the interest of the taxpayers and fare payers of New York. Whose interest is served by denying us the benefits of this contract?

The issue of domestic manufature has apparently come under discussion in part as a result of MTA's acknowledged intention of entering into safe harbor leases upon delivery of this equipment. I should note at this point that MTA would expect to receive approximately 25% of the eventual purchase of this equipment through safe harbor leasing, and it is our present intention to use these funds to purchase an additional 226 subway cars in a contract that is yet to be negotiated. Some members of the Committee have questioned whether safe harbor lease benefits should be available for equipment which does not comply with the buy America standards of the UMTA Act. I would respectfully suggest to the members of this Committee that imposing this standard with respect to the determination of whether MTA's new subway cars constitute "qualified lease property" would be an extraordinary act without any precedent in the tax code, the sole effect of which would be to create a heavy additional expense to New York fare payers and tax payers, thus penalizing New York for its efforts to minimize costs.

Allow me to explain: As I indicated earlier, only the New York system relies entirely on local funds for rail and bus procurement; every other transit agency utilizes a combination of 80% federal and 20% local funds. When other agencies use federal funds, the buy America provisions must be met, so such a restriction would as a practical matter only effect the MTA, and only serve to encourage award by MTA to Budd without reasonable competition in the marketplace.

In this context, it is worthwhile to note that no such similar restriction exists in the tax code with respect to the availability of the investment tax credit or ACRS deductions for other equipment. I am informed, for example, that substantial amounts of equipment acquired by U.S. companies — particularly by the airline and container shipping industry — are produced abroad and financed with a combination of export subsidies and conventional or safe harbor leases.

Moreover a private transportation company can acquire railroad cars abroad and enter into safe harbor leasing arrangements with respect to these cars, obtaining the benefits of both the investment tax credit and ACRS deductions. Why should the MTA be subjected to more restructive rules?

Further, I am well aware of the fact that Senator Dole has expressed reservations about the wisdom of the transit safe harbor lease provision in general. I have previously responded at length to the Senator on this subject and am attaching a copy of that response to this statement. I would like to touch just briefly here on these concerns.

Two arguments have been raised in opposition to the transit safe harbor leasing provision. The first suggests that it is an inefficient form of subsidy; the second questions the appropriateness of transferring deductions from tax exempt or otherwise non-taxpaying entities to tax paying entities.

Let me first comment on the issue of efficiency of safe harbor as distinguished from a direct federal grant. In 1981 MTA received approximately 18% of the available federal funds in the transit capital program. Our share had little to do with the local effort we are making to rebuild our system, or to the fact that we have one-third of the nation's transit riders. In summary, a direct federal grant has little to do with real need, and certainly fails to reward those localities who have taken it upon themselves to assume the burden of transit capital finance. Safe harbor, on the other hand, rewards localities only on the basis of local need as reflected by the willingness of local taxpayers and farepayers to purchase new rolling stock.

Second, as to whether it is inappropriate to provide tax incentives to assist non-taxpayer entities, I suggest that this view is totally out of step with current realities. The tax code, for example, has traditionally been used to subsidize investors in low and moderate income housing sponsored by non-profit entities. ACRS deductions are currently being used by private investors to reduce rentals on tankers leased to the United States Navy, to reduce the cost of telephones leased to the Department of Energy, and even to reduce the cost of computers leased to the United States House of Representatives. And, tax-exempt (under treaty or otherwise) foreign corporations frequently supply major items of equipment to United States users and realize, thrugh finance lease payments, the benefits of accelerated depreciation allowances and, in a number of situations, the investment tax credit. It would seem somewhat inconsistent to suggest that these uses of the tax code are appropriate, whereas assistance to capital-starved tax supported public transportation — a service essential to the economic well-being of our nation's largest cities — is inappropriate.

I know that over the next several weeks this Committee will be considering whether to retain, modify, or repeal safe habor leasing. I would be remiss if I did not take this opportunity to tell you precisely how repeal of the transit provision would affect MTA's rebuilding program. As you know, if safe harbor is repealed, other forms of private transportation will still have access to conventional lease financing opportunities, so their damage will be mitigated considerably. But for public transportation the door to lease financing will be effectively closed and the effects will be catastrophic.

Included within MTA's rebuilding program is a projected $480 million of resources to be raised from equity in safe harbor lease transactions. If the transit safe harbor lease provision is repealed, we will immediately cancel a portion of our commuter car order which represents 100 cars or approximately $100 million. We will suspend plans to purchase 226 subway cars for our IND-BMT division. And we will be forced to cut from our capital plan other essential infrastructure improvements which represent approximately $130 million of expenditures. In short, improvements that have been programmed by MTA in reliance on last year's tax bill, and which the public now expects, will be stripped away. I do hope that this Committee, as it considers safe harbor leasing and related issues, will give full consideration to the actual interests and needs of the transit riders and tax payers of our nation's largest city.

Finally, I would specifically urge that the Administration move quickly to clarify its position with respect to the Bombardier award. I acknowledge that there are important policy issues to resolve, but for the MTA the adverse effects of delay by virtue of uncertainty will be substantial. Not only will the status of the most important contract in our entire rebuilding program be left "on hold", but the financial consequences of delay owing to escalation will be (assuming an annual inflation rate of 6%) in excess of $100,000 a day.

I would be pleased to answer any questions the Committee may have.

98-591 O—82——8

TAB I

Memorandum

DATE: June 10, 1982

TO:

FROM: Steven M. Polan

RE: Budd Price

Budd states that its low bid per car was $770,768, as against Bombardier's $798,770.

While this price was communicated to MTA on May 17, 1982, the Budd price which represents a more accurate comparison with the Bombardier price was $799,885.

The difference reflects three factors. First, MTA insisted on a contract provision with all three bidders to the effect that MTA would retain 3% of the total contract price until final acceptance of all cars. Such a payment provision was contained in the Bombardier offer of $798,770, but not in Budd's "low" bid. Budd's offer contained a price increase of $2,061, per car in the event the Authority insisted on 3% retainage on the terms specified above.

Second, in light of the New York State statutory criteria which required MTA to give consideration to the portion of work that would be performed within New York State, MTA had insisted on each bidder submitting a price quote utilizing New York Air Brake (NYAB) braking components to the extent that such components met NYCTA qualification testing. The Bombardier price included NYAB

components without any increase in price, while the Budd "low" bid was predicated on the use of braking equipment manufactured by Westinghouse Air Brake Company of Pennsylvania. Budd submitted an alternative proposal utilizing NYAB components at a price increase of $3819 per car.

Taking account of these three factors, the Budd price is more accurately stated as $776,648.

Additionally, it should be noted that even the price of $776,648 takes account of a price reduction of $23,237, on the basis of the use of trucks (undercarriages) manufactured by Equipamentos Villares of Brazil. Because the Villares truck has not yet met the qualification testing required by NYCTA, this price was stated as an option to the Authority. In the event the Villares truck does not pass the qualification tests, or the Authority chooses to use the already qualified Buckeye trucks (manufactured in Ohio) for any reason, the Budd price would increase by $23,237, to $799,885. (The Budd proposal provides that MTA take the commercail risk of non-qualification by the Villares truck.) The Bombardier price of $798,770 is predicated on the use of Buckeye trucks, and contains no option for alternative truck manufacture.

Finally, it is important to note that a comparison of the price per car offered by Bombardier and Budd is not a true measure of the differences in their economic offers (excluding financing proposals). Equally important are the proposed payment schedules and the manner in which economic price adjustments (escalation payments) are calculated.

TAB J

Memorandum

DATE: June 10, 1982

TO: Files

FROM: Steve Polan

RE:

The following is NYS Department of Commerce's revised estimates of NYS impact of the Bombardier and Budd proposals:

	NYS Content	Direct Jobs	Total Jobs (including indirect)	NYS Tax Revenue Generated
Budd	$38 million components $27 million assembly $10 million renovation	1,325	2,340	$3.9 million
Bombardier	$104 million components	1,180	2,384	$3.3 million

CC: Ravitch
Plavin
Downey

NEW YORK STATE DEPARTMENT of COMMERCE
ESTIMATES of N.Y. ECONOMIC IMPACT
($ in Millions)

	Bombardier	Budd[2]	Francorail
Direct Effect			
# Jobs [1]	1,180	1,325	657
$ of Payroll	24.9	34.7	12.8
NYS Taxes Generated	1.8	2.6	.9
Indirect Effect			
# Jobs [1]	767	861	427
$ of Payroll	13.0	14.6	7.2
NYS Taxes Generated	1.0	1.1	.5
Construction Impact			
# Jobs[1]	-	280	-
$ of Payroll	-	5.1	-
NYS Taxes Generated	-	.4	-
Total Effect			
# Jobs[1]	1,947	2,466	1,084
$ of Payroll	37.9	54.4	20.0
NYS Taxes Generated	2.8	4.1	1.4

[1] Man years of Labor Effort.
[2] Excess costs for New York content not included.

In terms of New York State tax revenues generated, the spread between the highest and the lowest is about $2.7 million over the life of the contract or about $1.9 million in the Net Present Value terms that have been used for comparisons among the three builders. Thus, it is difficult to justify offsetting any price differential greater than this amount in terms of its economic return to New York. Any price differential larger than this would have transit riders paying what is, in effect, an inefficient subsidy to promote New York State economic activity. This subsidy would be even greater in the case of Budd's proposal, which includes a cost penalty of $3.1 million (or $2.1 million in NPV terms) for use of New York State produced air brakes.

It is in the interest of MTA and the New York economy to give particular encouragement to suppliers of components and sub-components. Car assembly will have an economic impact which runs only as long as the contract, itself. Component manufacturers who are able to supply a variety of carbuilders as well as MTA's continuing need for replacement parts, can continue well into the future.

Total United States Content

In addition to their respective New York State content, the various proposals have been analyzed in terms of overall American content. The Budd car would have approximately 78% U.S. content, representing all components of the car except its trucks, propulsion equipment and carshells. These would be provided from Brazil and Portugal. The Bombardier car would have a U.S. content of 40%, representing the value of the New York State components, additional items such as air conditioners, and final assembly in Vermont. The French car would have a U.S. value of 36%, representing New York State and other components.

Propulsion Systems

Through direct negotiations with the Westinghouse Electric Company, MTA determined that production of the propulsion elements such as motor system components and controllers could occur at a variety of locations around the world. After three way negotiations among MTA, Westinghouse and the carbuilders, Bombardier has agreed to the production of motor system components in New York State, and Francorail has specified approximately 30% of the motor system components for New York State. The primary facility for such Westinghouse products is in Buffalo. Budd has chosen to have these components produced offshore, in order to generate a small increment of export-import financing from Brazil as a competitive offset to the Canadian and French offers.

Braking Systems

Over the past several months, MTA has been engaged in intensive efforts to qualify the New York Air Brake (NYAB) Company of Watertown, New York as a supplier for subway car braking systems. This would have the virtue of stimulating economic activity in a depressed area, as well as creating competition for the current monopoly supplier of air brakes. At this point, a substantial proportion of the NYAB system has been tested and approved. Through three way negotiations among MTA, NYAB and the three carbuilders, all three have agreed to include these components in their proposals, generating a New York content of approximately $25,000 per car. If further tests are successfully concluded over the next few months, this figure could rise to $40,000 per car. It should be noted that Bombardier and Francorail have agreed to absorb any cost differential involved in the use of New York Air Brake, while Budd has asked for a $3,800 increase in price to make this change.

New York State Assembly Location

While the bulk of the price of a subway car is represented in its components, there is still a significant work element represented in the final assembly. This component of the car cost contributes about 5% of the final price. In the negotiations, each builder was asked to specify the conditions under which they would propose New York State assembly. Their responses were as follows:

BUDD

Would agree, if suitable terms could be arranged, to do final assembly at the former General Electric rail plant in Hornell, New York. This plant is now owned by a local Industrial Development Agency and employs a non-union work force. Budd's initial proposal had asked for a significant price increase to cover wage differentials as compared with their plan to locate in Martinsville, Virginia, but they have now agreed to absorb any added costs. At the same time, however, they have asked for delay in the delivery schedule or relief on liquidated damages if this change causes their timetable to slip. The degree of economic activity at Hornell is estimated at $37,500 per car, plus a $10 million initial investment ($12,000 per car) for leasehold improvements.

FRANCORAIL

Would not consider New York State final assembly because of cost differentials (estimated at $16,000 per car), concern over quality control in a new site, and the risks of delay.

BOMBARDIER

Would not consider New York State assembly for reasons similar to the French. More importantly, however, they have recently invested in an assembly plant in Barre, Vermont, which would be used for the final assembly of the cars in this order.

Economic Impact within New York State

Based on the estimated purchases of goods involved in these contracts, the New York State Department of Commerce has prepared estimates of the economic impact of this procurement activity. While the overall spread among the three companies is not great in comparison to the magnitude of the total contract, the estimates shown in the table below indicate that the Budd proposal, which includes state assembly, generates somewhat more New York State activity than the other manufacturers on a per car basis:

MEMORANDUM 5/18/82

NEW YORK STATE and U.S. CONTENT OF R-62 SUBWAY CARS

Under the New York statute permitting the Metropolitan Transportation Authority (MTA) to negotiate for the procurement of subway cars, four factors are identified as subjects of negotiation. These are "financing, cost, delivery schedules, and performance of all or a portion of the contract at sites within the state of New York or using goods produced and services provided within the state of New York."

Within the traditional business practices involved in subway car procurement, selection of subcontractors and suppliers does not occur until a contract is awarded. However, because of the importance of this issue in these negotiations, MTA has made it the subject of early consideration with each of the prime contenders and has received their best current estimates as to the types and amounts of New York content to be included in their bids. MTA intends to embody these estimates into the carbuilder's contract, while sufficient latitude must be maintained for negotiation of favorable business terms with potential New York suppliers. Nevertheless, based on these efforts, and based on our direct contact with major sub-system suppliers, we feel confident that the targets for New York State content, described below, can be met.

Each of the three competing manufacturers has agreed to the production of substantial portions of its cars or their sub-components in New York locations. This was accomplished in the face of understandable resistance from French and Canadian interests since New York content has been achieved at the expense of economic benefits to foreign suppliers and political benefits to the governments, themselves. The estimated dollar value of New York State production is included in the table below and is a valid basis for comparison among the potential contractors. Furthermore, each will incur additional New York State expense for shipping, port handling, technical support and other related matters. These matters are more difficult to quantify and compare and are not included in the comparative table. Finally, each of the contractors has agreed to continue joint efforts with MTA and the New York State Department of Commerce to identify additional New York suppliers in order to increase the content further.

Comparative New York State Content - R-62 Cars

	Budd	Bombardier	Francorail
Estimated Value of New York State Components	$46,200	$125,600	$67,600
Major Items	Air Brakes Draft Gear Air Cond. Parts Front Ends Interior Panels	Motor Systems Air Brakes Glazing Wire Air Cond. Parts Communications Door Parts Interior Panels Door Thresholds Plymetal	Air Brakes Motor Systems (part) Draft Gear Door Parts Communications Interior Panels
Final Assembly Costs	$37,500	0	0
Plant Investment	$12,000	0	0
Total NYS Component Content	$95,700	$125,600	$67,600
% of Car Cost	12%	16%	8%

Major Elements

While the New York State content, as shown above, includes a variety of large and small items from numerous suppliers of all sizes, the key issues have revolved around the use of New York supplied components for the braking and propulsion systems of the car. These two systems comprise a very substantial element of the car's cost, and MTA has put significant effort into securing New York State suppliers in a way consistent with its very demanding specifications. These particular systems are critical to the safe, reliable performance of the car and its compatibility with the existing fleet. Through direct negotiations with key suppliers, MTA has made the opportunity available for each potential carbuilder to achieve substantial New York content in these areas. The outcome of these negotiations is detailed below:

TAB K

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MEMORANDUM FOR SECRETARY REGAN

JUN 23 1982

FROM: Peter J. Wallison

SUBJECT: Deciding what "is likely to be a determining factor" under Section 1912 of the Export-Import Bank Act Amendments of 1978

In response to a request from The Budd Company, you must decide whether to authorise Eximbank to provide financing for the purchase of 825 subway cars from Budd by the Metropolitan Transport Authority (MTA) of New York. This financing would match the financing offered by the Export Development Corporation of Canada in support of subway cars made by Bombardier, Inc. Under Section 1912 of the Export-Import Bank Amendments of 1978, you can give such an authorization only if you determine that "the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale."

The proper interpretation of this statutory language is the subject of this memorandum.

Section 1912 has never been used before. There are no court cases interpreting it. Indeed, the term "a determining factor" does not appear elsewhere in the United States Code. Nor is there any significant legislative history to elucidate what was intended by the phrase "likely to be a determining factor." When Section 1912 was introduced on the floor of the Senate as an amendment by Senator Stevenson, he stated that the proposal would not permit "across-the-board financing of U.S. domestic sales....[rather,] specific prerequsites would be established for the use of the authority." This statement, while suggesting that the Section is to be narrowly construed, is not very helpful as a guide to the interpretation of its specific words.

We are therefore remitted to construing the Section's words according to their plain meaning, and not as legal terms of art. In this connection, the Oxford English Dictionary defines "determining" to mean that which decides, or leads to a decision; that which fixes a course of action.

It should be noted that the statute does not speak in terms of "the determining factor" in the sale, but rather "a determining factor." This, however, should not be troublesome.

In any commercial transaction there are bound to be a number of factors which override others, and which tip the balance in favor of one supplier rather than another. Any one of these elements would be a determining factor.

Conversely, some aspects of a transaction, even though important, would not be determining factors if they do not directly affect the outcome. Thus, suppose that a bidder offered -- on unfavorable financing terms -- a bus which could not negotiate narrow 90 degree turns, while its competitor offered -- on favorable financing terms -- a bus with which could turn off avenues onto narrow side streets. In such a case, even if the first bidder's financing terms were to be changed so that they were as favorable as those of the second bidder, the first bidder would not be awarded the contract. The financing terms, while an important consideration, would not be a determining factor in the decision of the purchasing agency. Conversely, if both bidders offered substantially equivalent buses, but unequal financing packages, the unfavorable financing package offered by the first bidder would likely be a determining factor. Under this analysis, whether financing terms are a determining factor depends entirely on the priorities of the purchasing agency -- and specifically whether, if the financing terms had been equal, the contract would have gone to the U.S. bidder.

Thus, what is required is a close analysis of the purchasing agency's corporate state of mind, and ultimately a judgment as to what it would have done had the financing terms been different from what they were in fact. In the MTA case, a beginning point for this analysis is provided by the testimony of Richard Ravitch, on May 28, 1982, before the Senate Finance Committee. In that testimony, Ravitch stated that the absence of sufficient financing associated with the Budd offer made that proposal "non-competitive." Ravitch's statement does not necessarily mean that the cost of financing was "a determining factor" in the rejection of the Budd proposal; there may be many other reasons to choose the Bombardier proposal over the Budd proposal, even if the cost of the financing for the Budd proposal had matched the cost of the financing offered by Bombardier.*

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* Although the analytical process described in this memo requires an assessment of MTA's intentions, you are not in my view required to get a definitive statement on the subject from an official of MTA. The statute requires you to judge what is "likely to be a determining factor", not what "will be a determining factor", and thus indicates that your decision requires that you interpose your judgment. Of course, as a practical matter, if MTA offers a definitive statement of what it would have done, your freedom to disregard such a statement is restricted.

Indeed, Ravitch went on to say in his testimony that as "significant as it was, however, the lack of favorable financing terms was not, itself, the only factor that led us to recommend Bombardier." In this connection, he cited a reluctance to place so much of the responsibility for MTA's 5-year plan with one company, the impact of the contract on New York State, the small price differential between Budd and Bombardier, and the fact that Bombardier would be making cars substantially identical to those purchased from Kawasaki. This list suggests that even if Budd had competitive financing it would not necessarily have been awarded the contract -- because several other factors might have been of overriding importance.

In summary, if you were to determine in the MTA case that Budd would not have been awarded the contract even if it had offered financing identical to that of Bombardier, then you would be justified in concluding that the financing terms offered by Canada are not "likely to be a determining factor" in the sale. Indeed, if you make that determination, you could not, under Section 1912, authorise the Eximbank to provide matching financing. On the other hand, if you determine that matching financing from Eximbank would be sufficient -- given MTA's priorities -- to alter the award to Bombardier, you would be justified in concluding that the financing terms offered by Canada are "likely to be a determining factor" in the sale.** If you make such a determination, Section 1912 permits, but does not require, that you authorise the Eximbank to provide matching financing.

** Both Section 1912 and its legislative history clearly indicate that Congress intended to authorise Eximbank financing to match only foreign official non-competitive export financing, not foreign official export financing in general. In other words, Section 1912 does not authorise Eximbank financing to match foreign official export credits which do not exceed limits under existing international export credit arrangements. It is the cost, not the availability, of the financing, which triggers Section 1912. For example, in the MTA case, had the Export Development Corporation of Canada offered financing at or above internationally agreed minimum levels, Section 1912 could not have been invoked, even though Budd could not provide any financing and even though the availability of financing were likely to be a critically important factor.

THE ATTACHED MATERIALS, PREPARED AFTER COMPLETION OF THE BASIC MTA MEMO, ARE INCLUDED FOR YOUR CONSIDERATION

82-9538

Date: JUN 28 1982

MEMORANDUM FOR: DEPUTY SECRETARY MCNAMAR

From: Assistant Secretary Leland

Subject: Your Inquiry on Canada's MTA Offer

Canadian DCM Shannon was correct in saying that the Canadians have offered to move to Arrangement rates and terms if (and only if) Ravitch agrees. As we state on page 5 of the memorandum to the Secretary, ". . . the Canadian Government had attempted to convince the MTA management to accept terms and conditions consistent with the Arrangement, but the MTA Chairman had refused . . . Canada did not feel it could unilaterally change its financing offer, thereby risking both its credibility and a sale which is of great importance to Canada."

We consider this line of argument something of a red herring, however, for two reasons:

-- The contract with Bombardier is not final until the Canadian Export Development Corporation confirms the terms of its financing offer to Canada;

-- Of course Ravitch refused to agree to stiffer terms than those already offered by EDC; why should he volunteer to give up a free lunch?

In the memo to the Secretary we did a rough evaluation of the three offers in Net Present Value terms, assuming that Arrangement requirements as to interest rate, cover, and term were observed. That evaluation, on page 9, yielded the following result:

Table 3

Francorail	$558 million
Budd	$560 million
Bombardier	$573 million

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Ex. Sec.
Surname	ITF/Barber IRQ/McCown	ITF Lange	IT Cornell			
Initials / Date	6/25 6/25	6/25	6/25	/	/	/

OS F 10-01.8 (2-80) which replaces OS 3129 which may be used until stock is depleted

This Net Present Value calculation usually is the best measure of the value of any stream of payments over time. However, other measures have entered the discussion of the MTA deal, specifically, the (undiscounted) total interest expenditure on various financing packages. The Annex to this paper shows the level of total interest expenditure for several financing packages. It indicates that the additional cost to the MTA, and total savings to the Canadian Government, of moving to Arrangement terms and conditions will be $150 - $175 million. This figure assumes that both MTA and the Canadian Government face about the same market borrowing cost, of 14 percent. If the Canadian Government's borrowing cost is higher than 14 percent, the cost to New York of moving to Arrangement rates will remain the same but the savings to Canada would be greater.

It is, of course, a major conclusion of our memo to the Secretary that Bombardier still would get the contract even if all offers were at Arrangement terms and conditions. We therefore see no reason for you to meet with Ravitch. Indeed, such a meeting would tend to take the heat off the Canadians and shift the responsibility for "fixing" their predatory financing from them to you.

ANNEX

COMPUTATION OF TOTAL INTEREST COSTS OF A SUBSIDIZED CREDIT

The best measure of any costs that are distributed over time is their present discounted value. For the particular case of a subsidy, this measure recognizes that there is a difference between $1 paid out today and $1 paid out in ten years; the latter will require an expenditure of $1 by the taxpayer while the former will require that plus ten years' interest.

Nevertheless, other measures of the subsidy cost have been used in discussions of financing options for the MTA cars -- specifically, calculations of the (undiscounted) total interest costs for one financing package as opposed to another. These costs can easily be calculated if a convention is accepted: in the absence of official support, a borrower will finance his purchase by borrowing for a finite term, T, at a market rate of interest, r_M.

Total interest payments, P, then will be given by

$$(1) \qquad P = \int_0^\infty r\, D'(t)\, dt + \int_0^\infty r_M\, D^2(t)\, dt$$

where r = the interest rate on the subsidized package
$D'(t)$ = the amount of subsidized credit outstanding, assumed to be 0 for $t \geq T$, and
$D^2(t)$ = amount of market credit needed to finance the purchase.

The maximum interest payments, M, will be made when all borrowing is done at market rates:

$$M = \int_0^\infty r_M\, D^0(t)\, dt$$

where D^0 is the amount outstanding under a financing package at strictly market terms and conditions.

By the previous convention, $D^0(t) = 0$ for $t \geq T$

and M is less than infinity. It follows from $D^2(t) = D^0(t) - D'(t)$ that

$$(2) \qquad P = \int_0^\infty (r - r_M)\, D'(t)\, dt + M$$

or

- b -

(2') $P = M - S$, where S is the total interest subsidy.

$$\int_0^{\infty} (r_M - r)\, D'(t)\, dt \ .$$

S can be written

$$(3) \qquad S = \bar{D}_1 (r_M - r)\, T_1$$

where $\bar{D}_1$ is the average amount of subsidized credit outstanding.

The lender of subsidized credits would have total (undiscounted) interest losses of

$$L = \int_0^{\infty} (r^S - r)\, D'(t)\, dt$$

if he were to borrow at r^S. If market borrowing rates of lender and borrower are the same, then the lender's losses L are the same as the borrower's gain S.

The increased interest payment that, say, the MTA would pay if the credit were made at market terms and conditions instead of at subsidized rates and terms is simply calculated as the difference in S (the amount of the subsidy) that results from raising the interest rate and tightening the other terms and conditions. For example:

A. The Current Canadian Offer

$T_1 = 15$ years

$\bar{D}' = \frac{\$880\text{m}}{2} \times .85 = \$374\text{m}$

$(r_M - r) = (.14 - .097) = .043$. So $S_A = \$241\text{m}$

The total S_A is roughly the cost to the Canadian government of the Bombardier financing, as well as the subsidy to the MTA, assuming both could borrow on the capital markets at 14 percent.

B. The Canadian Offer Constrained to Arrangement Terms

$T_1 = 13.5$ or 11.0 years

$\bar{D}' = \frac{\$880\text{m}}{2} \times .85 \times .6 = \$224.4\text{m}$

$(r_M - r) = (.14 - .1125)$

So $S_B = \$83.3\text{m}$ or $\$67.9\text{m}$

The variation in term, T_1, results from some uncertainty under Arrangement rules as to the proper "starting point" -- i.e., the point at which repayments of principal

are to begin in a transaction such as this. Hence, the added gain to the Canadians, and the added cost to the MTA, would be the difference between S_A and S_B, or roughly $158 - 173 million.

C. Comparing Two Different Bids

To compare two different bids, it is necessary also to take account of variations in the maximum interest payments, M. That is, the total interest paid at market rates will differ from bid to bid since the total amount borrowed under one bid usually will differ from the total amount borrowed under another. In the case of the bids to construct the MTA cars, Morgan assumed terms, T, of 30 years -- in their judgment a proper borrowing term considering the expected life of the equipment.

Total interest costs P of the current Budd and Bombardier bids, and the respective subsidies S to MTA, then can be calculated roughly as

$$\bar{D}^{\circ}_{Budd} = \frac{\$820\,m}{2} \qquad \bar{D}^{\circ}_{Bombardier} = \frac{\$830\,m}{2}$$

$$M_{Budd} = \$410\,m \times .14 \times 30 = \$1722\,m \qquad M_{Bombardier} = \$440\,m \times .14 \times 30 = \$1848\,m$$

$$S_{Budd} = \$38\,m \qquad S_{Bombardier} = \$241\,m$$

By equation (2'), then, the interest payable under the Budd offer over and above that payable under the Bombardier offer is given by

$$(5) \qquad P_{Budd} - P_{Bombardier} = \$77\,m$$

This last computation clearly is sensitive to the assumed term of the market loan, T. If T were assumed to be 15 years instead of the 30 used in Morgan's calculations, then

$$S_{Budd} = \$861\,m \qquad S_{Bombardier} = \$924\,m$$

and

$$P_{Budd} - P_{Bombardier} = \$144\,m$$

As T becomes larger Budd's advantage (which in this computation is assumed to include both lower price and lower escalation costs), would win out over Bombardier's advantage in financing. In fact, as T becomes unboundedly large, $P_{Budd} - P_{Bombardier}$ would approach negative infinity. This conclusion illustrates the limitations of

this method of calculating financial subsidies. It also reinforces the assertion at the beginning of this paper that NPV is the best measure of any flow of payments, such as subsidies, which is distributed over a period of time.

There remains one question raised by MTA Chairman Ravitch in his testimony May 28 before the Senate Finance Committee. In that testimony he declared that MTA had saved "over $90 million" in interest charges over the life of the contract by buying from Bombardier. How does this statement fit with the figures given above?

In estimating the interest savings mentioned in Ravitch's testimony, Morgan modified the calculations in one major respect. It only took account of the differences in interest payments over the total life of the financing offered by Bombardier, i.e., 15 years, rather than over the entire 30-year term of the assumed market financing. Morgan also substituted an "effective rate of interest" for the rate of 9.7 percent actually offered by Bombardier. This "effective rate" incorporates management and other fees, and adjusts for the difference between the semi-annual repayments required on the official credit and the annual repayments assumed on 14 percent bond financing. No underwriting fees were included for the bond financing. These changes raised Bombardier's offer from the bid rate of 9.7 percent interest to an "effective rate" of 9.97 percent. Consequently the difference in interest payments shown in equation (5) would be raised by around $20 million.

THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

June 24, 1982

Action
Barber
McCown

MEMORANDUM FOR BERYL SPRINKEL
MARC LELAND
THOMAS LEDDY
ROBERT CORNELL

SUBJECT : MTA/Bombardier

Gerry Shannon, the DCM at the Canadian Embassy, called me today, and I finally talked to him about 6:15 p.m.

He inquired as to whether a decision was imminent and whether a meeting has been scheduled with Ravitch. I indicated that I knew no reason for a meeting with Ravitch, and had nothing to report to Shannon regarding our decision.

Shannon indicated that the Canadian government was prepared to move to the OECD consensus rate of 11.25%, if Ravitch would release them from their commitment to 9.7%. He indicated that this was made quite clear to U.S. Embassy Ottawa last week and that he had mentioned it to me before. (I have absolutely no recollection of his ever suggesting that Canada was officially prepared to move to the consensus rate.) He confirmed that this was an official Canadian offer.

In light of this, I believe that we should have an analysis comparing the Budd and Bombardier offers to MTA assuming that the Bombardier offer were made with 11.25% financing and 85% cover in accordance with the existing OECD arrangement.

1. How much would this save the Canadians/cost New York?

2. Would Bombardier still be likely to get the contract? If yes, why should we meet with Ravitch?

Please have answers to these questions by [redacted] be prepared to discuss them with me.

R.T.M.

R. T. McNamar

cc: Secretary Regan

Date: July 6, 1982

MEMORANDUM FOR: DEPUTY SECRETARY MCNAMAR

Through Under Secretary Sprinkel

From: [redacted]

Subject: Subway Car Decision by New York Public Authorities Control Board

We have just received the attached decision by the New York Public Authorities Control Board approving the Bombardier contract.

The background memo provided the PACB by MTA confirms our analysis of the case in all important respects. It outlines the major factors which MTA considered and concludes "Bombardier's offer was, with respect to each of the factors noted above, either superior to or the equivalent of the offers of its two competitors." It stresses that the amount of Canadian financing offered was "an extremely important consideration," but states that the 9.7 percent interest rate was not the central factor in choosing Bombardier. It stresses the importance of Bombardier/Kawasaki quality and reliability of delivery. It concludes that Bombardier's offer was preferred "on the basis of all of the specified MTA objectives."

The PACB decision notes that the MTA has advised it would continue to recommend Bombardier's bid over either of the others, even were the terms of EDC financing to change.

Please add this memorandum to your decision package. We believe that all essential elements now are in place. Before a decision is announced, we continue to believe it very important that interested members of Congress be notified. We will work with Legislative Affairs on this.

Attachment

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Ex. Sec.
Surname	ITF Barber	ITF Lange	IT Cornell			
Initials / Date	[illegible] 6/7	[illegible] 6/7	[illegible] 7/6/82	/	/	/

OS F 10-01.11 (2-80) which replaces OS 3129 which may be used until stock is depleted

State of New York

Metropolitan
Transportation
Authority

347 Madison Avenue New York, New York 10017 Phone 212 878-7000

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Chairman

Lawrence R. Bailey
Daniel T. Scannell
Vice Chairman

Carol Bellamy
Stephen Berger
David W. Brown
Jane K. Butcher
Herbert J. Libert
John F. McAlevey
Ronay Menschel
William J. Sheridan
Constantine Sidamon-Eristoff
Robert F. Wagner, Jr.
Robert T. Waldbauer

Executive Director
David Z. Plavin

July 2, 1982

Dear Mr. Leland:

Per our conversation, I am enclosing a copy of the resolution approving the Bombardier contract by the New York State Public Authorities Control Board and a memorandum that sets forth our reasons for awarding the contract.

I look forward to the opportunity to meeting you in an effort to resolve this matter.

Sincerely,

Richard Ravitch
Chairman

Mr. Marc Leland
Assistant Secretary of International Affairs
Department of Treasury
Washington, D.C. 20220

NEW YORK STATE PUBLIC AUTHORITIES CONTROL BOARD

R E S O L U T I O N No. 82-MT-001

APPROVES THE AWARD OF A CONTRACT BY THE METROPOLITAN TRANSPORTATION AUTHORITY FOR THE NEW YORK CITY TRANSIT AUTHORITY PURSUANT TO SPECIAL LEGISLATIVE AUTHORITY

WHEREAS, the New York State Public Authorities Control Board ("the Board") created pursuant to Chapter 38, Laws of 1976 is empowered, pursuant to section 1209(3)(c) of the Public Authorities Law (as amended by L.1981, c. 1039) to approve the award of contracts proposed by the New York City Transit Authority ("TA") which have been negotiated pursuant to such chapter, and

WHEREAS, the Metropolitan Transportation Authority ("MTA") on behalf of the TA has, pursuant to section 1266(c) of the Public Authorities Law, submitted a proposed contract and a Contingent Modification Agreement (together with the "Contract") dated June 10, 1982 and its Resolution to the Board on June 15, 1982, and

WHEREAS, the Contract which the MTA has negotiated with Bombardier, Incorporated (the "Contractor") has resulted in a price per car of $798,700 (U.S.) and a gross car cost of $658,985,250 (U.S.) to purchase 825 cars, and

WHEREAS, the estimated gross cost to the MTA of the car purchase is approximately $1.421 billion (U.S.) which amounts include interest costs, financing costs and estimated escalation costs, and

WHEREAS, the Contract price for the cars is subject to escalation based upon indices by the U.S. Bureau of Labor Statistics which are estimated to be 8 1/2 percent for labor and 8 percent for material, and

WHEREAS, the Export Development Corporation of Canada (EDC) is to finance 85 percent of the total Contract price ($560,137,462) plus escalation, at an interest rate of 9.7 percent per annum, and

WHEREAS, the Contractor agrees to achieve a minimum New York State Content of $125,600 per car (16% of car price) excluding transportation and on-site staffing, and

WHEREAS, efforts by the Contractor will continue to attempt to raise the New York State Content to $160,000 per car (20% of car price), and

WHEREAS, upon the Contract's effective date the MTA will pay 5 percent of the total car cost, which is estimated to be $32.9 million (U.S.), to be financed from the 1979 State Energy Conservation Through Improved Transportation Bond Fund appropriation made by Chapter 369 of the Laws of 1979 and reappropriated by Chapter 54, of the Laws of 1982, and

WHEREAS, the MTA intends to market $1.6 billion in revenue bonds backed by a pledge of TA and Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA") revenues as authorized

by the Transportation Systems Assistance and Financing Act of 1981, and as identified in the MTA five-year Capital Plan as approved by the MTA Board of Directors and the Metropolitan Transportation Authority Capital Programs Review Board, and

WHEREAS, approximately $836.5 million (U.S.) of such bond proceeds or other funding sources may be required after application of an additional $9.7 million from the 1979 State Energy Conservation Through Improved Transportation Bonds to finance periodic Contract payments, including estimated escalation, aggregating approximately $135 million (U.S.) on the non-EDC financed portion of the Contract and the repayment of approximately $744 million representing principal, including estimated escalation costs, to EDC, and

WHEREAS, EDC's loan shall be repaid in twenty equal successive semiannual installments of which the first shall be due six months following the date of the shipment of all 825 cars by the Contractor, or a date certain to be agreed upon by MTA and EDC, and

WHEREAS, the Contract is subject to the MTA entering into a financing agreement with EDC on/or before July 23, 1982 or as such date may be extended by mutual agreement of MTA and EDC, and

WHEREAS, a petition has or may be filed with the Federal government to impose countervailing duties against the Contractor

to offset alleged foreign official noncompetitive financing, and an unappealable final decision imposes such duties, the MTA shall under the terms of a Contingent Modification Agreement restructure the EDC financing agreement to eliminate any subsidy which would result in countervailing duties or redeem its bonds or notes theretofore issued to EDC and substitute MTA financing for EDC financing, and

WHEREAS, the MTA has advised this Board that in the event of any change in the terms of the EDC financing, it continues to recommend the Contractor's final negotiated bid over either of the two competitors, and

WHEREAS, the Contract includes a provision that permits MTA to cancel the Contract if the United States Export-Import Bank extends matching financing to a domestic seller by July 15, 1982, and

WHEREAS, the United States Export-Import Bank has not as yet made any such commitment, and

NOW THEREFORE BE IT RESOLVED, that the members of this Board do unanimously approve the Contract and its award for the project identified below, pursuant to Public Authorities §1209(3)(c):

PROJECT IDENTIFICATION

Name of Project	Estimated Contract and Financing Commitment
Purchase of 825 passenger cars:	
Payments on car order from the proceeds of the 1979 State Energy Conservation Through Improved Transportation Bond Fund.	$ 42,600,000
Contract progress payments, including estimated escalation, and repayments of EDC loan expected to be paid from the proceeds of MTA Revenue Bonds or such other source as has been or may be approved within the MTA five-year Capital Plan.	836,475,000
Interest cost to be paid from the TA's Operating Budget.	531,637,200
TOTAL	$1,410,713,000

This resolution shall become effective immediately provided that MTA enters into a financing agreement with EDC satisfactory to MTA on substantially the terms herein described. This resolution approves the award of the Contract as filed with PACB on June 15, 1982.

C. Mark Lawton, Chairman
Public Authorities Control Board

for Arthur J. Kremer
Member of the Board

John J. Marchi
Member of the Board

82-MT-001

CERTIFICATION

STATE OF NEW YORK
COUNTY OF Albany ss.

I, Steven G. Somlo, the duly elected and qualified Assistant Secretary and Counsel of the New York State Public Authorities Control Board, do hereby certify that at a meeting of such Board, held on June 30, 1982, the attached resolution was duly adopted by the unanimous vote of the members of the Board. The resolution attached is a true copy of the resolution and the certification of the determination made by such resolution and of the signatures thereto of each of the members of the Board or of their duly appointed representatives, the original of which is on file in my office. As of the date of this certification such resolution has not been modified, superseded, amended or repealed and remains in full force and effect.

In witness whereof I have hereunto set my hand this 1st day of July, 1982.

Steven G. Somlo
Steven G. Somlo
Assistant Secretary and Counsel

STATE OF NEW YORK
COUNTY OF Albany ss.

On this 1st day of July, 1982, before me personally came Steven G. Somlo to me known, who, being by me duly sworn, did depose and say that he is the Assistant Secretary and Counsel of the New York State Public Authorities Control Board, that he executed the foregoing certification and that the contents thereof are true.

Christine A. Conroy
Christine A. Conroy
Notary Public, State of New York
Qualified in Albany County
Commission expires: 3/30/83
Reg. No. 4706631

MEMORANDUM RE:

MTA-BOMBARDIER SUBWAY CAR CONTRACT AWARD

The Memorandum discusses the basis of MTA's decision to award a subway car contract for 825 R-62 subway cars to Bombardier, Inc. This contract represents the largest single procurement in a largely locally funded, $7.9 billion program to rebuild the New York public transportation system over the next five years.

In the summer of 1981 MTA received competitive bids for 325 IRT subway cars. The low bid was $895,000 per car, which in MTA's judgment was excessive. Questions were also raised at that time as to MTA's ability to market bonds in excess of $1.2 billion in the time frame required to fund the purchase of the full planned order of 1,150 cars. MTA then sought State legislation to authorize negotiation for the purchase of subway cars. It made this proposal for two principal reasons: first, to reduce the price of the cars, and second, to attract sufficient vendor related financing on favorable terms to assure that payments under any subway car contract could be met without sacrificing other elements of the capital program.

Over the past several months MTA negotiated with three subway carbuilders: Bombardier, a Canadian firm; Francorail, a consortium of French industrial companies; and the Budd Co., a wholly owned subsidiary of the Thyssen Company of Germany. These negotiations followed the award of a negotiated contract for 325 R-62 subway cars to the Nissho Iwai American Corporation, representing Kawasaki Heavy Industries.

MTA's objectives in this negotiation, consistent with State law, were to purchase the highest quality car with the fastest possible delivery, to effect the greatest possible savings taking account of both car price and vendor related financing, to maximize the content of the car manufactured within the State of New York, consistent with considerations of manufacturing capacity, economic benefits and technical objectives, and to afford MTA the greatest protection against potential risks in contractor performance. MTA's ultimate decision to award to Bombardier was based on the Authority's judgement that Bombardier's offer was, with respect to each of the factors noted above, either superior to or the equivalent of the offers of its two competitors.

With respect to both price and financing, Bombardier offered the most advantageous terms. Its car price ($798,770 per car) was below that of Francorail's and roughly equal to Budd's (based on equivalent contractual options). The amount of financing offered by Canada's Export Development Corporation (85% of total contract price with repayment over ten years) was the most favorable offer, and an extremely important consideration in MTA's willingness to commit to a contract of this magnitude. In contrast to the availability of financing, the favorable interest rate (9.7% p.a.), while providing substantial and important economic benefits to MTA, and providing the basis for Bombardier's equality with Francorail was not the central factor in choosing Bombardier. Given MTA's need to raise more than $4 billion in public market financing over the next five years and the pressure this will place on all New York State and City agency borrowings, availability of the EDC financing offer is a most significant factor.

With respect to car quality and overall confidence in carbuilder engineering, MTA had a clear preference for the Bombardier offer, and this was a substantial factor in MTA's decision. Bombardier had entered into a licensing agreement with Kawasaki Heavy Industries, so that the Bombardier cars would be substantially identical to the Kawasaki cars the MTA has already committed to purchase. MTA's evaluation of Kawasaki's work thus far is extremely favorable, and similar engineering offers the MTA the advantage of compatibility with other new cars in the IRT fleet, with consequent beneficial impacts on maintenance and parts inventory requirements.

While Budd promised a slightly faster delivery schedule than Bombardier or Francorail (which were roughly equivalent), it was MTA's judgement that the Bombardier schedule was more likely to be met. Bombardier's recent delivery record is quite impressive, while Budd is behind in current orders, with a backlog swelling to more than 1,100 cars. In fact, because Budd's Red Lion (Philadelphia) plant is filled to capacity, Budd proposed to build this order at a new assembly facility; first planned for Martinsville, Virginia and then for Hornell, New York. This was cause for considerable concern by MTA, in that either facility would require substantial capital investment and the hiring and training of a new work force. In light of MTA's concern for reliability and performance, and its recent experience with the faulty manufacture of both rail cars and buses, assembly by Budd at an unproven facility was a manufacturing risk MTA was most reluctant to take.

Bombardier's offer was also preferred on the basis of New York State economic activity that would be stimulated by its production plan. The Bombardier offer included 16% in New York content (with a potential of 20%), while Budd proposed 12% (including Hornell assembly) and Francorail 8%. The New York State Department of Commerce has confirmed MTA's judgement in this regard; it reported that the Bombardier award will produce the greatest number of jobs for New York State and will likely result in greater long-term benefits through repeat orders generated by the initial component manufacture.

Finally, MTA, as a matter of prudent business judgement, was unwilling to rely on the financial and manufacturing capacity of any single company for the two largest procurements in the five year rebuilding program. MTA has already committed to Budd for the purchase of 316 commuter cars at a price expected to exceed $350 million. Furthermore, Budd is competing for an additional subway car contract that will be awarded later this year. It is not in MTA's interest to rely so overwhelmingly on any single company, both from the short-term perspective of minimizing risks of delivery delays and the long-term perspective of generating competition within the car building industry for future MTA procurements.

In summary, while the economic analyses and negotiation process relating to this contract were extraordinarily complex, the ultimate decision as between the three bidders was clear. On the basis of all of the specified MTA objectives, Bombardier's offer was preferred.

Senator HEINZ. Thank you, Mr. Leland.
Mr. DeKieffer.

STATEMENT OF DONALD DeKIEFFER, GENERAL COUNSEL, U.S. TRADE REPRESENTATIVE

Mr. DEKIEFFER. Thank you, Mr. Chairman. Mr. Chairman, I have submitted a statement for the record; and, like Mr. Leland, I would prefer not to read it, but would ask that it be included in the record.

Senator HEINZ. Without objection, your entire statement will be included.

Mr. DEKIEFFER. Thank you, Mr. Chairman. I would just like to emphasize about five points that are mentioned in my prepared statement; and speaking up first that Mr. Leland left off; that is, the administration strenuously opposed the use of export credit subsidies.

He mentioned, as did you, the fact that the administration in the past several months has successfully renegotiated the OECD arrangement. We have not only raised the minimum rates, but included a lot of provisions that we believe are particularly important to the effective use of the OECD consensus arrangement, and particularly the nonderogation provision.

DEFICIENCIES IN OUR CURRENT LAW

Mr. Chairman, if I might, I would like to mention a couple of things that were touched upon by Mr. Samuel and very briefly mentioned by Mr. Leland. Frankly, one of the real problems that I personally see with existing law are the deficiencies in our current law. Our current countervailing duty laws and, for that matter, our current section 301 standards are not really designed to reach a situation like we have, not only with regard to self-propelled railcars, but also such things as aircraft and large powerplants, draglines, and things of that sort.

Our countervailing duty laws, for that matter, our section 301 statutes, are designed to deal with situations where there is a stream of commerce and where American industry can, indeed, benefit by extra duties being imposed on current imports which offset the value of the subsidy. When you have situations like we have in the MTA area, all that can be accomplished under our current law is the imposition of countervailing duties or some sort of retaliation internationally which can penalize consumers, with no real benefit to domestic industry, because by that time they have already lost the order.

It is an anomaly that more and more of these large orders are coming along, and we are seeing America being faced for what everybody acknowledges both here and overseas as predatory and unfair. I think it is good for this committee and other committees to consider possible changes in these laws, because these kind of changes just cannot go on. It is intolerable.

We are losing American jobs to what we acknowledge to be unfair and predatory export credit financing. We have made some progress in the OECD. We would hope that other countries would not violate the terms of derogation, but, in the meantime, I person-

ally believe it is important that we carefully examine what appear to be some loopholes in our current law.

I think that such an examination can draw from an examination that is currently being conducted by the International Trade Commission, both at the behest of the President and of the Senate, on the effect of export credit arrangements on various industries. There are three I'd like to mention.

I want to be very clear that these three industries, particularly aircraft, powerplants, and self-propelled railcars, are not the only industries directly affected by these so-called front-end sales. There are many others. Just for purposes of convenience and for ease of conducting an investigation, both we and the Senate have asked the International Trade Commission to focus on these three as examples of the kinds of problems that many other industries face.

Two final issues I would like to address before I turn it over to Mr. Leland again are perhaps some misunderstandings of what the administration's position is and what the U.S. obligations and rights are under the GATT.

RIGHTS AND OBLIGATIONS UNDER THE SUBSIDIES CODE

I have previously testified before the Senate Finance Committee with regard to our interpretation of our GATT rights and obligations; in particular, our GATT rights and obligations under the Subsidies Code.

Item A of the so-called illustrative list to the Subsidies Code speaks about export credits, and the second paragraph of item A appears to give—not only appears to, but does give an escape clause, if you will, from the general obligation item of paragraph 1 of item A. But what it says is that so long as a country is offering export credits within the OECD consensus rate, such subsidies shall not be regarded, shall not be considered as an export subsidy prohibited by this agreement.

Now, to me the very clear meaning of that is that it is not prohibited by the Subsidies Code. It does not mean that it is not prohibited by U.S. law. It does not mean that the United States is somehow constrained by the Subsidies Code itself from imposing countervailing duties whatsoever.

Now, this particular view is disputed by some of our trading partners. Frankly, I do not believe that the Senate or the House would ever accept the Subsidies Code if it had any other meaning than that. We fully intend to press our rights, both domestically and internationally in this regard.

I also want to emphasize, this is not some sort of unilateral interpretation of the Subsidies Code by the United States. It is the interpretation, is the only interpretation that could possibly be garnered from a fair reading of what this phrase says.

So, with regard to item K, with regard to our own ability to act internationally, I don't think we have—there should be no question remaining as far as U.S. law is concerned about what we can do in the field of countervailing duties.

Finally, with regard to the specific issues concerned in the MTA case, we have requested and have received in the Subsidies Code the consultations under the dispute settlement mechanism on July

5 this year with the Canadian Government. We currently have accepted the section 301 petition submitted by the AFL–CIO, as of this past Monday, and are proceeding with that as is warranted by the facts.

We raised the issue last Wednesday. I raised it in Geneva in the meeting on the Subsidies Code, and we accused Canada—I think not without its having being warned— that they have not only violated the OECD agreement, but have explicitly, clearly violated article 9 of the Subsidies Code. There is simply no question in my mind that they have violated their undertaking under the Subsidies Code, whether or not there may be some questions about the legality of their derogation, of the OECD arrangement.

Mr. Chairman, I would like to leave it right there, and thank you.

[The complete statement follows:]

STATEMENT BY DONALD E. DEKIEFFER GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

INTRODUCTION

Mr. Chairman, thank you for the invitation to appear before the Committee this morning to discuss the recent competition for subway cars for the New York Metropolitan Transit Authority and related matters.

With your permission, I should like to focus on the trade policy issues associated with foreign government subsidization of official export credit financing.

TRADE POLICY CONSIDERATIONS

The principal point to be made from a trade policy perspective is that the Administration is firmly opposed to foreign export credit subsidies that support the sale of goods within the United States in competition with goods of U.S. manufacture.

If we are to realize fully the benefits of open trade, and if the trading system is to allocate resources efficiently on a global scale, trade flows must reflect natural competitive advantage and not government manipulation of the conditions of trade. It is an unfortunate fact that governments still engage in a variety of trade-distorting practices, designed to undermine the judgment of the marketplace. One such practice is export subsidies, that inhibit the normal competitive forces in the international marketplace.

Indeed, one of the most difficult and damaging export subsidy problems facing the United States today is in the area of official export financing. As market interest rates have soared, the latitude for subsidization through cheap official export credit has grown dramatically. Some governments have been increasingly tempted to compensate for noncompetitive exports through heavily subsidized financing packages. This is particularly true, of course, with respect to big ticket items such as power generation plants, large commercial transportation systems, and the present case of rail cars, where financial arrangements are an important competitive factor.

We have been concerned, for example, with the extent of export credit subsidies permitted under current international agreements concerning such goods as aircraft, power plants, draglines, oil drilling machinery, etc. These and other high cost, capital intensive, high technology products have been developed by U.S. manufacturers over decades through investment in R&D and production technology, careful attention to customer service, and a commitment to quality. Yet, although they offer very competitive products, U.S. producers of such goods now frequently lose sales to foreign competitors, not because the competition has a better product, but because they are able to draw upon their national treasuries for subsidized export financing. These sales losses are not only occuring in export markets. We are unfortunately seeing that subsidization of export credits can also seriously distort trade in our own domestic market.

The administration has acted forcefully on the international front to reform the OECD Arrangement on Guidelines for Officially Supported Export Credits. We have just concluded an agreement with 21 other OECD participants to increase the Arrangement's minimum interest rate levels substantially. In addition, we have won limited acceptance of the principle that minimum interest rates sanctioned by the

Arrangement should be differentiated by currency; Japan and other low interest rate countries now are authorized to key their official export credit rates to their financial market rates.

While these achievements constitute the most significant improvements in international rules governing export finance since the Arrangement was first signed in 1978, we are under no illusions that the job is finished.

The United States has entered into several international agreements regarding official export credit practices. Some of these agreements provide for minimum interest rates for sales into the United States and other countries; some, however, do not cover interest rates, or are limited to sales outside of the United States. None of these agreements, however, sanction trade-distorting subsidization of export credit financing.

Let me state clearly, as we have stated in the OECD negotiations on reform of the Arrangement on Export Credits, in the meetings of the GATT Committee on Subsidies and Countervailing Measures, and in other appropriate domestic and international fora that we object to subsidized financing by foreign governmental institutions in support of sales in the United States.

Ambassador Brock, in his major trade policy statement last October before the House Subcommittee on Trade, said: "Our companies and our trading partners should know that we are prepared to act firmly, using such available remedies as are appropriate to the particular circumstances, to ensure that goods are fairly traded in the U.S. market without being dumped or subsidized in an injurious way."

In order to assess the impact on U.S. industries of trade distortions in capital equipment imports into the United States caused by subsidized export credits, we recognize that more information is needed on the extent to which such goods are sold, or are offered for sale, in the United States, the level of subsidization, and the impact on competition in the United States. Such information will be invaluable in enabling the Administration and the Congress to deal with the problems created by such trade practices, and will support our international negotiating efforts.

Accordingly, on May 25, at the direction of the President, and pursuant to Section 332(g) of the Tariff Act of 1930, the United States Trade Representative requested the U.S. International Trade Commission to conduct an investigation and make a report not later than November 26, 1982, on the sale in the United States of capital equipment from foreign countries with the aid of subsidized export credits. Because of the diversity of products and industries that could be involved, we asked that the study be limited to civil transport aircraft, commuter size and larger, heavy electrical eqiupment, and self-propelled rail cars. We know that sales of these items frequently involve financing provided with the assistance of the seller, and in the case of foreign manufacturers selling in the United States, this financing usually involves export credits provided by foreign official lending agencies.

We have asked that the Commission's report contain a comparison of sales of imported and domestically produced civil transport aircraft, heavy electrical equipment, and self-propelled rail cars in the United States during the past five years, including the terms of sale, an identification of instances where the financial arrangements were at interest rates below those being paid on funds borrowed on either domestic or international capital markets, the amount of such differences, and an assessment of the effect which such differences had on the sales and on conditions of competition between imported and domestic products. Since we are interested in the effect on competition in the U.S. market of the availability of subsidized export credits, the investigation will examine offers for sale as well as sales actually consumated.

We do not suggest that trade distortion resulting from export credit subsidization is limited to these three product categories. Not at all. But to facilitate an in-depth study of the problem in a short period of time, we agreed with the Commission that it would be best to focus on representative sectors. That we have done. Also, the Senate Finance Committee has requested that the Commission conduct a study, also pursuant to Section 332(g), of the impact of export credit subsidies by foreign governments on the competitive position of U.S. producers of commuter aircraft.

One tangible consequence of asking for these 332 studies is to put would-be U.S. purchasers on notice that there is substantial concern in the Administration and the Congress over the adverse impact on U.S. manufacturers resulting from foreign government subsidization of export credits. Awareness of the possibility of countervailing duties is also heightened, and we would hope that U.S. purchasers would avoid contracts involving foreign export credit subsidies. It is not our intention to increase costs to U.S. purchasers—far from it—but we must be aware, as the Congress is, that U.S. manufacturers who have invested their own risk capital in developing competitive products should not be at a significant disadvantage selling in the

United States because of foreign financing subsidies. These U.S. firms have no access to government subsidized financing to match and neutralize the foreign subsidies.

We do not want to see consumers pay higher prices. At the same time, we cannot permit U.S. workers to lose their jobs because competitive products lose out to foreign goods because of subsidized financing.

EXPORT CREDITS AND CVD'S

Some in the United States, as well as some of our trading partners, are of the view that, if foreign export credit practices are in accord with the OECD Arrangement on Export Credits or the OECD Standstill Declaration on Aircraft Financing of May 1975, then there would not be consideration of application of countervailing duties. As that is not an accurate interpetation of U.S. law, I should like to clarify the matter.

Two GATT agreements signed in 1979, the Agreement on Subsidies and Countervailing Measures and the Agreement on Trade in Civil Aircraft, state clearly that assistance governments provide to foster exports, should not adversely affect the trade interests of others. The Agreement on Subsidies and Countervailing Measures, among whose signatories are most of the members of the OECD, includes in its listing of prohibited, trade distortive export subsidies the following:

The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least twelve orginal signatories to the Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rate provisions of the relevant undertaking an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

The second paragraph has unfortunately led some to believe that it provides protection against countervailing duties should the subsidied export credits be consistent with one or another OECD agreement. There are no international undertakings which provide guidelines for acceptable or reasonable rates of interest for export credits for sales of civil aircraft to the United States, or an exception from the above internationally accepted definition of subsidized export credit financing. The OECD Arrangement establishes minimum interest for capital goods, other than aircraft and nuclear power stations, imported into the United States and other countries. This minimum rate, now specified at 12.4 percent, still involves a substantial subsidy element. Nothing in the OECD Arrangement or the Subsidies Code obliges the United States to ignore the trade distortion inherent in the subsidy, or to modify the provisions or application of our countervailing duties statute, which provides an avenue for affected U.S. parties to seek relief from subsidy-induced trade injury. Subsidization of official export financing—whether subsidization of interest rates or other government-supported financing concessions—offers an artificial competitive advantage to foreign manufacturers selling in the United States, which could cause injury to U.S. firms. Consequently, we have indicated to our trading partners our specific objection to the subsidiziation of financing by foreign governmental institutions in support of sales of capital goods in the United States and of our desire to negotiate an end to all subsidization of export credits.

EXPORT CREDIT SUBSIDY AND 301/GATT

On June 16, 1982, the U.S. requested consultations under Article 12 of the Subsidies Code with Canada regarding EDC's grant of financing to Bombardier at rates below those prescribed by the International Arrangement On Export Credits. Those consultations, which were held on July 5, did not result in a resolution of the dispute. Subsequently, on Monday, July 19, 1982, the USTR decided to initiate a 301 investigation on the basis of a petition filed by the Industrial Union Department of the AFL-CIO and others. A Federal Register notice announcing this decision should be published today.

Senator HEINZ. Thank you, Mr. DeKieffer.

EXPORT CREDIT NEGOTIATIONS

Mr. Leland, all sections, 1900 and following, are written to direct and encourage the Treasury Department to succeed in export credit negotiations, ultimately to succeed in making it totally unnecessary for this kind of situation to exist at all.

Do you favor as a principal objective for continuing export credit negotiations at the OECD, which have resulted thus far in the arrangement, a thorough and total ban on export credits among OECD nations, an intra-OECD ban?

Mr. LELAND. Favor it? Yes. What we have been trying to negotiate in the agreement is to get eventually to market rates, no more than pure cover.

Senator HEINZ. I am going beyond market rates. I am suggesting that there be no use of officially sanctioned supported export credits among OECD countries. That goes beyond the idea of the arrangement, which sets interest rates at market rates. But that we just have market terms among developed nations which have plenty of internal sources of financing; just say the Eximbanks of the world will not finance in those situations.

Mr. LELAND. I certainly favor that, Mr. Chairman, as an objective. Given the different banking systems, in some of the governments that is a difficult one.

Senator HEINZ. I understand that. But since we accept that as a goal, and certainly you yourself have spoken or are on record as saying you don't favor subsidized export credits. And, certainly given the fact that the Secretary of the Treasury went to both the French and the Canadians and said, "Look, your offers violate the arrangement; withdraw them," the French did, the Canadians didn't; that is one of the reasons for this hearing.

Why shouldn't we, as suggested by Senator Proxmire and suggested by Howard Samuel and suggested by many others, simply finds means of banning any bid that is premised, that is supported by below arrangement that is to say, deeply subsidized export credit from a foreign source? Why shouldn't we just ban that?

Mr. LELAND. I would agree, Mr. Chairman, that it is certainly worth looking at. I have not really analyzed its effect, obviously. There are factors of injury tests and GATT obligations and all that kind of thing to take into account. I really couldn't determine whether or not unilateral actions taken by us would be helpful or harmful to our negotiations to stop both the subsidies and, if we could, the Government involvement in export credit at all. But I think the proposal is well worth looking at.

Senator HEINZ. Whether it is helpful or not in your negotiations—I mean apart from that, why wouldn't that be good policy for the United States?

Mr. LELAND. Apart from that, I would say it is certainly worth looking at. I think you are going to have an injury question because a party is subsidizing and there is no injury at all then you might want to let someone have the benefit of that, if that is a fact.

Senator HEINZ. I don't disagree with that.

Mr. LELAND. But, basically, I think it is well worth looking at.

RELOCATION OF U.S. PRODUCTION FACILITIES

Senator HEINZ. Mr. DeKieffer, does the decision of the Treasury Department on this case in any way worry you? Does it worry you, for example, that if, not only in this case but in subsequent cases, the Treasury, as it has been alleged, simply says, "Gee, it is just too expensive to use section 1912. It may be the law, but, boy, we certainly don't want to spend money, even if it is the law," is there any risk, for example, that U.S. producers will simply pick up their marbles here in the United States and locate their production facilities overseas?

Mr. DEKIEFFER. Well, Mr. Chairman, there is certainly no question that an American company cannot, no matter how well-managed, no matter how skilfully operated, no matter how productive or how good their products are, there is no way they can compete against foreign taxpayers. It's just impossible.

It's a distortion of trade in the sense that any efficiently operated American business cannot be expected to compete effectively offshore.

When we see foreign countries bidding for Americans to move offshore on the basis of granting subsidies, I think you put your fingers on a very significant problem—we could lose business either offshore by reason of subsidized export credits—I should put a caveat on it. I don't believe there's anything under the GATT, philosophically or any other way, which should require American taxpayers to meet illegal bids, which is exactly what we've offered in this case.

But I think you've put your finger on a very important problem. Unless we can stop the kinds of predatory price practices that have taken place here, we are going to lose significant amounts of business, not only here, but we're going to have Americans moving offshore.

Senator HEINZ. One of the efforts Bill Brock has been making, as I understand it, is to try and get the Japanese to locate more production facilities in the United States where they can.

I don't know. If I was a Japanese business conglomerate and I saw that U.S. policy was to let the French and the Canadians come in and steal jobs, I don't know that I'd be very anxious to locate production facilities in the United States.

Would that be a problem, too?

Mr. DEKIEFFER. I don't think there's an obligation on the part of the United States to try to match illegal subsidies by offering subsidies of our own. The objective, I think, that all of us have is to try to make sure that not only can American industry compete but the United States as a whole can compete against foreign countries on a level basis.

I don't buy the argument for a moment that the United States is somehow unproductive or uncompetitive.

Senator HEINZ. I understand that.

But the question is: Since we're trying to encourage people who are in this country to stay here and people who aren't to come here and invest their capital, given the policy which I think is going to be interpreted by a lot of Europeans and Canadians in the future that, well, we will allow people—whether they're inefficient or effi-

cient, it makes no difference—if they can get subsidized export credit financing here, we won't do anything about it. That's going to cost us jobs. It's going to cost us investment, isn't it?

I'm not arguing that section 1912 is necessarily the right solution. I'm saying we'd better find a solution to that, hadn't we?

Mr. DEKIEFFER. As I've said in my testimony, Senator, I think you're quite right, there are some deficiencies in U.S. law. I think that Mr. Leland, just a moment ago, the testimony by Mr. Samuel is one to look at. I think the bill you introduced, as a matter of fact, with regard to urban mass transit itself, is one where it gets a very careful examination, as well as you, Senator.

These are the kinds of things that we do need to take a look at the kinds of subsidies that are current today and simply aren't reachable under U.S. law.

Senator HEINZ. Now, both of you have expressed concerns about the situation. For whatever reasons it was the Treasury Department took their actions, certainly the were concerned, otherwise they wouldn't have gone to the French and the Canadians in the first place. And you wouldn't be here either if you weren't concerned.

The question really is: What do we do about this in the future? What do you propose?

Mr. Leland.

COMPETITIVE MARKET RATES

Mr. LELAND. I think what we should do about it in the future is to discuss it in the arrangement. We have to get ourselves up to market rates.

Senator HEINZ. Let's assume we make the same kind of progress with the arrangement we have over the last 5 to 10 years, which I would characterize, at best, as slow and frustrating.

Mr. LELAND. Over the last year, we went from 8 to 12.4 percent, where we are now for the developed world. Interest rates, hopefully, will be coming down. We don't have that far to go in getting ourselves up nearly to market rates.

Basically, it's a few countries that are really doing this. Canada is usually not the greatest sinner in this area. They generally support us.

If one thinks of the Japanese companies going into France rather than the United States because of the availability of exporter credit financing, I would tend to doubt it. I would think there would be a lot of other reasons why they might not be moving to France anyway.

Senator HEINZ. The question is not whether they're going to move to France. The question is whether they're going to move from Japan to the United States, where the market is. They're not going to move to France. The question is whether they're going to move out of Japan.

By the way, we have a little bill kicking around the U.S. Senate called S. 2300, the local content bill.

And when we, for whatever reasons, are unable to make our laws against unfair trading practices—and this is clearly an unfair trade practice—work, we find ways to legislate solutions.

The administration says they're totally opposed to S. 2300, which would require, I guess by 1985 or 1986, to have any manufacturer who sells more than several hundred thousand cars have 90 percent of the content of those cars U.S. source do.

Frankly, the way that the administration could bring about a two-thirds vote in the House and Senate for that kind of legislation is not to deal with issues like this.

I think it's fine that you've expressed concern. But I really think we have to find some solutions, not just some concerns.

Mr. LELAND. We now have the nonderogation pledge in that area. I think it's a very important move, and we shouldn't have any more of these kinds of transactions. We will still go ahead with the investigation under section 301, where the President has powers. We have our countervailing duty laws and the GATT. It still violates all of this. We can take this to the GATT. We have a lot of mechanisms that we can and will use. The issues that are presently in the press on subsidies and other areas are quite clear. We will use these and we have to use them.

It is our view that you've got to do it in some way that can be very effective without calling for overwhelming reaction that would leave everybody behind.

Senator HEINZ. That's all well and good. What you've said is that there's a lot of levers out there, let's just pull every one in sight.

Yet a moment ago you said you'd like to have a more effective lever.

My question to you is this: You may not have a suggestion today, but when will the Treasury Department and the administration have a concrete legislative suggestion or set of suggestions or go definitively on record as saying, "We don't need any changes."

I'd like to know—and I'm not asking you today, because we only called this hearing a week ago, and I don't expect any administration to deal with what is a complex problem in just 7 days.

But I would like to know if you see some progress here in terms of making some clear recommendation—either clear because you don't have any or clear because you do—to the Congress.

Mr. LELAND. It's certainly an issue that Mr. DeKieffer and I spend a lot of time on and will which continue to evolve.

Senator HEINZ. So, you see no particular date in sight at which you will say something definitive?

Mr. LELAND. At this moment, I don't know that I can. I don't know the exact date when we'll do it. We've got a GATT ministerial coming up which is a very important forcing event for a lot of things when one is trying to negotiate with one's trading partners. Our recommendation may be influenced by the results of that meeting.

Senator HEINZ. Thank you.

My time has expired.

Senator RIEGLE. Thank you, Mr. Chairman.

Mr. Leland, did you handle this matter for Secretary Regan?

Mr. LELAND. Not entirely, no.

Senator RIEGLE. Who did?

Mr. LELAND. It was handled by a several people.

Senator RIEGLE. Who headed the work group?

Mr. LELAND. It was a combination of people in the General Counsel's Office and Bob Cornell, who works with me.

Was there a person in charge?

Mr. LELAND. If anyone was, Bob Cornell, one of my deputies was.

Senator RIEGLE. Is he here now?

Mr. LELAND. No, he is not.

Senator RIEGLE. But he was the person in charge of this effort?

Mr. LELAND. Secretary Regan had great involvement in it, as well as the Deputy Secretary. I had a great involvement in it, as did a lot of the staff and the Treasury General Counsel. Therefore it's really difficult to answer.

Senator RIEGLE. What was the name of the chap you mentioned again?

Mr. LELAND. Cornell. But in making a decision, whenever anything subsequently was done, we were all involved. He just coordinated.

Senator RIEGLE. Did he or anybody else in the work group make any attempt to meet with the Budd Co.?

Mr. LELAND. As I understand it, there were several conversations with the Budd Co.

Senator RIEGLE. Did they ask to meet with you?

Mr. LELAND. Excuse me?

Senator RIEGLE. Did they ask to meet with you?

Mr. LELAND. As far as I know, except until the very end, there was no request by Budd to meet. They delivered a lot of papers.

Senator RIEGLE. Are you certain of that?

Mr. LELAND. So far as I know, I am.

Senator RIEGLE. Can somebody check with Mr. Cornell before you leave today to find out when, in fact, Budd asked to sit down and discuss this matter with you?

Mr. LELAND. Mr. Barber was handling it with Mr. Cornell.

Mr. BARBER. Senator, I checked yesterday with Mr. Cornell and this morning with the executive secretariat—which is in charge of the Secretary's schedule—and the Deputy Secretary's office. None of those sources could either recall or find any evidence of a direct request to meet with us except for a telephone request that came in on the 12th of July, the day before the decision was announced.

Senator RIEGLE. What was the thrust of that telephone request?

Mr. BARBER. I was not involved, sir. I don't know.

Senator RIEGLE. Does anybody know? Is somebody here who knows?

Who took the call?

Mr. BARBER. I believe the call came into the Deputy Secretary's office.

Senator RIEGLE. Did they ask to come in and meet with you?

Mr. BARBER. I was told, secondhand, that there was a request to come in.

Senator RIEGLE. What was the response?

Mr. BARBER. As far as I know, the response was that we would be willing to meet. But I don't know that precisely.

Senator RIEGLE. My understanding is to the contrary.

I'd like you to really nail this down. We'll ask Budd when they came in. That's why the people who really handle the work efforts ought to be the ones to come in, not others.

Mr. BARBER. I was involved with this constantly. I know we also had a letter from a public relations firm, the Gray Company. It was dated July 6. They offered to facilitate a meeting between the Secretary and the Vice Chairman of Budd if we would consider such a meeting appropriate.

Senator RIEGLE. Did it occur to you maybe to initiate a meeting?

BUDD COMPANY POSITION

Mr. BARBER. We thought we had a fairly complete record of the Budd company's position, both from letters they sent us, from telephone conversations with my boss, the director of the Office of Trade Finance, and from testimony that Budd made here on the Hill, May 28, before the Senate Finance Committee, and June 10 before the MTA Board.

Senator RIEGLE. How many companies do we have in the United States today who produce train cars of this sort?

Mr. BARBER. One that I know of.

Senator RIEGLE. We have one left; isn't that right?

Why wouldn't it be appropriate and a natural thing to do in a case of this magnitude—this is an enormous contract, there's a lot at stake, and it's highly technical in certain respects—why wouldn't it be logical for the Treasury Department to call in the last remaining company that's in this business in the United States and to talk face to face?

It seems so logical and sensible to me that I really find it hard to comprehend why that wouldn't be almost the first thing you would do.

Mr. LELAND. Senator, it would be if there was anything that they felt was left out of the record. They did deliver a lot of information.

With Mr. Ravitch, he just called me. If he had something he wanted done, he called me. Anybody can call me any time.

They could, likewise, call the Deputy Secretary and say, "Are you aware? We gave you all the documents, but they don't tell you the whole story." That's normally what you would do. When you've got a lot of people involved you would assume that they would provide—given what's involved and the company was involved—any briefs that they wanted to give you. They'd write and tell you about any letters or any facts that they wanted to bring to your attention, as they did.

Our legal counsel had several telephone conversations with their legal counsel. In none of these conversations did he say, "I want to come in and see you." I checked that before I came.

In none of them did they say, "All right, can we have a meeting."

These conversations were going on the whole time.

Senator RIEGLE. When I asked you then, on the day before the decision was announced, I take it the judgment in the department was not to meet with Budd; is that correct?

Mr. LELAND. From what I could find out—the Deputy Secretary wasn't there—they came in the day we had reached the decision, which was to be announced the next day.

As I said, we were really reaching a deadline when we had to do that.

Senator RIEGLE. Prior to the time that you announced the decision, you felt that there was no value to having such a meeting? Did you have one?

Mr. LELAND. We did not call such a meeting, nor did someone call such a meeting in the conversations with the lawyers. Nobody called and said, "Mr. so-and-so would like to come in. He thinks there's something you don't know."

We did have a lot of written material from them, which outlined their case.

Senator RIEGLE. We'll have a chance to ask them in a moment.

Apparently there was a request for a meeting if I understand you correctly.

Mr. LELAND. The request was for a meeting on the 11th, the day the decision was going to be made.

Senator RIEGLE. The point is there was a request for a meeting and yet there was no meeting.

Mr. LELAND. The decision was made that day; that's correct.

LABOR DEPARTMENT POSITION

Senator RIEGLE. Let me ask you this. What was the position of the Labor Department on this question?

Mr. LELAND. I don't know what the position of the Labor Department was.

Senator RIEGLE. Who would know?

Mr. LELAND. The Labor Department.

Senator RIEGLE. Within your group, wasn't an opinion sought from the Labor Department? Didn't the Labor Department comment on this?

Mr. LELAND. No.

Senator RIEGLE. You're certain of that?

Mr. LELAND. As far as I know.

Senator RIEGLE. Who would know of that?

Mr. LELAND. Ed would know, or I would know.

Mr. BARBER. We did not have a meeting with the Labor Department. We presumed that they would want to—that they would have supported financing for Budd.

Senator RIEGLE. You did not have a meeting with them?

Mr. BARBER. No, sir.

Senator RIEGLE. Did you solicit a comment from them in any form?

Mr. BARBER. No, sir.

Senator RIEGLE. Did they volunteer one?

Mr. BARBER. They did not.

Senator RIEGLE. Were there any conversations of any sort that went on with the Labor Department on this matter that you're aware of?

Mr. BARBER. No, sir.

Senator RIEGLE. How about the Commerce Department?

Mr. BARBER. I would give you the same answer.

Senator RIEGLE. So, there was no contact—you sought no opinion from them on this issue?

Mr. BARBER. No, sir.

Senator RIEGLE. And as far as you know, there was no contact, verbal, written, or otherwise?

Mr. BARBER. That's right, sir.

Senator RIEGLE. How about the State Department?

Mr. BARBER. The same.

Senator RIEGLE. How about the Office of the Trade Representative?

Mr. BARBER. The same.

Senator RIEGLE. You know, really, that surprises me. Because it makes it sound like we're an administration of a lot of disconnected bits and pieces, rather than a whole administration. It would seem to me that on a matter of this consequence, where there are labor implications, commerce implications, foreign policy implications—certainly trade policy implications— one ought to have some kind of way of dealing on an interagency or intergroup basis.

Wasn't this brought to bear?

Mr. LELAND. The Secretary's opinion, Senator, was that the statute gives him the obligation to make that determination, as set forth in section 1912. He believed that the responsibility, whichever way he decided, is his; he needed to take it. Before announcing the decision, he met with the Cabinet Council on Economic Affairs. After he made the decision he announced it, but first he advised his cabinet colleagues of his decision. It is not a Cabinet level decision. I think it's his responsibility. Section 1912 doesn't require the Secretary to take into account the impact on jobs, or the impact on business.

Senator RIEGLE. Well, frankly, that is a legalistic, argument that one can advance, but I am really astonished that you wouldn't do that. I mean, that's the whole nature, I think, of the way the process ought to properly work—that is, to include other key elements of the cabinet, the cabinet functions who would have the knowledge about the implications and meaning of this kind of decision to at least seek their opinion, at least to crank it in. I'm just surprised. I am disappointed to hear that that's the way you would approach this kind of a situation, because I think if one had looked at it from almost any point of view, this issue really came as something of a surprise. Did you get any feedback from OMB?

Mr. LELAND. No.

Senator RIEGLE. None at all?

Mr. LELAND. None at all.

Senator RIEGLE. Were there any conversations with OMB?

Mr. LELAND. As far as I know, no.

Mr. BARBER. No.

Senator RIEGLE. You're both saying it; nothing verbal, nothing written. I'd like you, if you would, to check with—Mr. Connell, is it? Is that the name of the fellow that you worked with?

Mr. LELAND. Cornell.

Senator RIEGLE. I'd like to find out if he confirms that as well.

Mr. LELAND. I have asked him.

Senator RIEGLE. My time is up right now.

ANALYSIS HOSTILE TO U.S. BUSINESS

Senator HEINZ. I just have one last question. I'll yield to Senator Riegle, if he has any additional ones, but Mr. Leland, when you sit back and you read the so-called analysis of the Budd bid to MTA, where you say they aren't dependable, that they're doing something that they can't do, when you say they're not competitive, in spite of the fact that Mr. Ravitch says that they were, and so forth, do you get the feeling that somebody reading that might think that the U.S. Government was somewhat hostile to U.S. business?

Mr. LELAND. I would hope not.

Senator HEINZ. Well, I suggest you do the following: go take your report, leave the office, get a drink in your hand, turn the TV set on, take a sip, get into a comfortable chair and read it, and then come back to the committee and tell me if you think it is in any way prejudicial or hostile to U.S. business.

Now, let me explain to you why I think it is not only hostile, but wrong. Your analysis says that Budd just wasn't in the running on all seven counts, in spite of the fact that two of the counts are the availability of subsidized Canadian financing, which was present, and the cost of said financing, which was low—illegally low. So your determination, which is supposed to be on seven out of seven against Budd, you yourself list two determining factors that clearly hurt.

Second, on the subject of product quality, you say Budd can't possibly produce this; they're not qualified to build these rapid transit cars. They have built several tens of thousands over the years. But Mr. Ravitch, who is our next witness, said on June 10, 1982 on behalf of the MTA, the source to whom you allegedly went for all your information, for the public record that all bidders in the case were fully qualifed to build the rapid transit cars. You don't come to the same conclusion. I don't know on what basis you do that, but it's certainly different from Mr. Ravitch.

On another question, getting back to the question whether or not financing was a determining factor, MTA seems to think that the financing was a factor. It specified in its contract with Bombardier they could rethink MTA's commitment if Budd could obtain Exim financing.

By the way, the Canadian Government apparently considered it so much of a factor that they were willing to indemnify Budd against any countervailing duty. They were willing to offer favorable financing here that would always result in a successful sale.

HATCHET JOB ON THE BUDD CO.

And then we have, unless my memory fails me, Mr. Ravitch's testimony before the Senate Finance Committee where he, on the issue of cost, said for the record that the Budd cars, if you didn't take financing into consideration, cost less. Now, I don't know what kind of a record Treasury is trying to build here. It sounds to me that you're trying to justify a Treasury decision after you've taken it, and I don't think you're cognizant of the damage you're doing either to the reputation of the last remaining American manufacturer of light rail vehicles—you are doing a hatchet job on them that Mr. Ravitch would never consider doing. Mr. Ravitch is a very

shrewd, able, honest, straight man who wants a good deal, and obviously he knows one when he sees one. But I wish I could say the same kind of things, favorable things, about the Treasury Department in this instance. Because not only have you done a hatchet job on an American business firm, but you are in the process of making kindling out of our basic stance in favor of free but fair trade.

Mr. LELAND. One thing I'd want to say, Mr. Chairman, is that we did not want to imply that there was anthing wrong with Budd. On the other side, we certainly said that the MTA did not want to be overdependent on one supplier, such as Budd. If Budd were so bad, as you say the report showed it, one would not have said that Budd was going to be used in the future. Our report envisioned they would be.

We were dealing with only this contract for the MTA's needs, and in light of the backlogs that the MTA said Budd had in connection with the other cars that they had recently ordered. It was an overall analysis, but I would hope—see it was far from our intention to say anything against Budd. As a matter of fact, the instructions were to avoid this. It goes back to your original point: we can't try to judge. It was none of our business and we shouldn't be involved.

We are not determining who would get the deal. What we were trying to do by talking to the attachés in the various embassies, by talking to Wall Street, by going to the MTA hearings, by reading their records was to decide, what were the determining factors.

Now, it was true that the existence of financing is, itself, a very important factor. But we are, under the statute, looking for a more specific test. We are not looking at whether there's financing or whether there is financing under the countervailing duty law. We're not looking at the difference between market financing and the financing which was offered.

All we can look at is the difference between this financing and financing consistent with the arrangment, and determine whether or not the difference would overturn the entire contract in favor of Budd.

On the price question, there are many differences. The argument centered on whether Budd could use certain components from Brazil. If they couldn't it would raise the price. But even accepting Budd's contention on price it appeared from the evidence that the price differential would not make a major difference on this contract. But I am glad you brought up the point, because I think it is important.

Senator HEINZ. My time has expired. There is a vote on the floor, but you haven't responded. I am going to ask you some more specific questions for the record that I am going to ask you to respond to, but what you haven't responded to are basic contradictions, reading what is in your evaluations and what's on the record, basically established before a variety of public bodies, including the Congress, in testimony by Mr. Ravitch and others, that contradict the findings, in my judgment, that you in your report made.

Senator RIEGLE. Thank you, Senator Heinz. We are both going to have to leave shortly. First of all I want to indicate that the proposal that was made by Mr. Samuel earlier is one that I think has

merit, and I'm going to undertake to draft that bill, have it drafted, and circulate it for co-sponsorship. And I would like to have your response to it, for the record. I would like to ask both of you to respond in writing, give your reaction to that bill that would make it illegal, under U.S. law, for U.S. purchasers to receive below-market financing from foreign governments when a U.S. seller has bid for the sale.

Now, I want to say one other thing. That is, I've been in the Congress 16 years and have seen five presidents serve over that period of time. This is one of the worst decisions I've seen in terms of the factors. I think it's a bad decision; I think it's been done in a fashion that is needlessly harmful, along the lines that Senator Heinz has described. I think you had an obligation to dig deeper and to do a better job. I think you should have invited Budd in, even had they not asked to come. I think you should have asked them to come.

There is a lot at stake here. This administration is so incredibly insensitive about jobs in this country that it is not surprising to me that it wouldn't occur to somebody to see if there might not be a way to at least hear from the last company in this United States that produces subway cars, but apparently that didn't occur to anybody. And I suspect it's because maybe everybody in this administration is working; they're not on the unemployment lines, they're well paid. Everybody that I see seems to be in pretty good financial shape.

And I am really upset about the fact that I detect, in this kind of insensitivity, almost a callousness about what is, in fact, going on across this country in terms of the industrial base which is being shredded by predatory trade practices, high interest rates, and basic indifference to the nature of the pileup of these problems. I am really upset about it.

Let me ask you this—how many subway cars has this Bombardier company produced so far? What is their track record?

Mr. LELAND. Of this style?

Senator RIEGLE. How many stainless steel cars?

Mr. LELAND. Stainless steels, they haven't.

Senator RIEGLE. They haven't produced any. Not a single one.

It would seem to me that in this finding by the Treasury Department, where you go into such great length on the defects or inadequacies of the Budd proposal or the Budd performance, how that can be judged against a company that has yet to build their first car of this type. It really stretches the imagination. It would almost make one think that there had to be a predisposition, when one starts in on this analysis, because I don't know how you really assess the existing American producer as against somebody who has not produced a single car of this type before. I just don't know how you make that kind of analysis, in the sense of coming down as you did.

I must go to vote, but I must let you know that I am disappointed in this decision. I think it's a serious mistake. I think even the process by which the decision was reached was ineffective, and I think it's very unfortunate for the country that that's the case.

The committee will be in recess until Senator Heinz returns.

[Recess.]

Senator HEINZ. Our next witness is Mr. Ravitch. I'd like to welcome Mr. Ravitch to his second Senate committee in just a few weeks.

Mr. Ravitch, you performed extremely well at the Finance Committee hearings; I'm sure you will do equally well here today.

Please proceed.

STATEMENT OF RICHARD RAVITCH, CHAIRMAN, METROPOLITAN TRANSIT AUTHORITY, NEW YORK CITY,

Mr. RAVITCH. Thank you very much, Senator.

My name is Richard Ravitch. I am chairman of the Metropolitan Transportation Authority of the city of New York. I am the chief executive officer of an independent public authority which is responsible for the operation of the largest public transportation systems in the United States, one which serves some 5.5 million riders daily, including 85 percent of all peak hour travelers entering Manhatten's central business district. Between our various operations, which include New York City's subway and bus system, the Long Island Railroad and the commuter services now operated by Conrail in our northern and western suburbs, we carry fully one third of all of the Nation's transit riders.

In my 2½ years as chairman, our efforts have focused on establishing a sound financial base for rebuilding the physical infrastructure of this immense regional transportation network. The physical assets of the MTA system, which are conservatively valued at $55 billion, exclusive of real estate and rights of way, are now in a severe state of disrepair. This situation results from years of capital disinvestment and neglect. As a consequence, these systems are now strained to carry the numbers of people who depend on their operation.

REBUILDING PLAN

Poor transit service adversely affects the region's economy, its employment, its sales, its productivity and the decision of its businesses to locate in the region. Last year MTA and the government of the State of New York confronted these severe transportation problems by putting in motion an extraordinary local financing plan which contemplates spending nearly $8 billion over 5 years to rebuild the MTA system. Recognizing that the new administration in Washington views public transit as a local responsibility, we accepted the challenge and formulated a plan that represents a unique attempt to use local resources to solve the capital needs of urban public transportation, rather than relying solely on the Federal capital assistance program which represents the sustenance of every other transit property in this country.

We asked that New York State authorize local taxpayers and local farepayers to assume the repayment of over $3 billion of debt, to be issued over the next 5 years. This debt will result in either higher fares or higher taxes or both. But we in New York recognize that reliable and safe public transportation is well worth this price.

The key element of our rebuilding plan is the replacement of overaged subway cars and the purchase of new commuter cars. We had planned to replace 1,375 subway cars and purchase 316 new

commuter rail cars. The projected cost of these purchases amounts to nearly $2 billion, which we propose to fund through the issuance of local debt secured by operating revenues.

With a financing program in place, MTA set about the task of contracting for the purchase of rolling stock. While I appreciate, Mr. Chairman, that this committee is most interested in the contract for 825 subway cars to the firm Bombardier of Canada, it is important to place this award in the context of the events and the decisions which preceded it.

Sometime earlier MTA had taken competitive bids for the purchase of 130 commuter rail cars, with options for additional cars in the event MTA's proposed financing program was fully realized. This contract was awarded to the Budd Co. The options for an additional 186 cars were subsequently exercised with a right to cancel certain of the cars if a repeal of safe harbor leasing were to reduce our financial resources.

While MTA initially expected first delivery of its $350 million commuter car order in the fall of this year, Budd has now advised us of a 5-month delay.

COMPETITIVE BIDS

Second, MTA sought competitive bids for 325 subway cars with options requested for up to 1,150 cars in total. Bids were received from Nissho Iwai American Corp. representing Kawasaki Heavy Industries of Japan, and the Budd Co. Nissho Iwai submitted the low bid of $895,000 per car. Had MTA chosen to use Federal funds which were then available, and those contract documents comply with all Federal requirements, it would have been forced, by Federal procurement regulations, to award to Kawasaki on the basis of its bid. However, in MTA's judgment the Nissho Iwai low bid was excessive and the Budd Co.'s high bid of $941,000 per car even more so.

Questions were also raised at the time as to MTA's ability to sell bonds in the amounts required to fund payments for the full cost of 1,150 cars.

Senator HEINZ. Is that the after-financing cost that you're giving us?

Mr. RAVITCH. No financing at all, Senator. We took those initial bids before the legislation that I described had been enacted in Albany.

Senator HEINZ. Thank you.

Mr. RAVITCH. MTA then proposed State legislation to authorize negotiation for the purchase of subway cars. Previous New York State law had required competitive bidding. We sought this authority for two reasons: first, because we believed we could reduce the price of the cars by negotiation; and second, to attract vendor-related financing on the most favorable terms to assure that payments under any subway car contract would be met.

In October of 1981 the government of the State of New York authorized MTA to award subway car contracts by negotiation, establishing as a statutory criteria for award the factors of price, financing, delivery schedule, and New York State economic activity to be generated by a proposed contract. MTA subsequently negotiated

with both Nissho Iwai and Budd for the first 325 cars. Nissho Iwai offered a more competitive proposal with respect to each of the four statutory factors identified in our State enabling legislation. The final award to Nissho Iwai was for $844,500 per car with associated financing of approximately half the value of the contract at an effective interest cost to MTA of 12¼ percent.

We then proceeded to negotiate for the award of the balance of the planned order, 825 cars, with Budd and two other firms which had submitted offers in response to our request for proposals, Bombardier of Canada and Francorail of France. Regrettably, MTA was unsuccessful in urging the Pullman Co. to re-enter the carbuilding business and compete for this procurement.

I personally spent considerable time with the officers of the Pullman Co. They were prepared to build the car, but they were not prepared to guarantee the price in any way whatsoever, and it would not be prudent for a public authority to enter into a contract of this size without a guaranteed price.

We understood from the outset that Budd would be somewhat disadvantaged with respect to its competitive position, insofar as Government-related financing was available. So in my very first discussions with the Budd Co. we suggested an alternative form of financing that could be made available to support its bid. We suggested that Budd's parent corporation, the Thyssen Corp. of West Germany, provide its credit to assist Budd in matching foreign competition.

And I might say, Senator, that I have been a businessman all my life—and when I first decided to explore the idea of vendor credit, I did not have foreign government export credit in mind. It has been a customary practice in the United States for companies where substantial business orders are at stake, to provide credit assistance to the buyer. The concept of buy now, pay later is part of the way American businesses have conducted themselves for many years. So it was, it seems to me, a natural, appropriate, and customary practice when we were contemplating giving out $1 billion worth of contracts to a couple of manufacturers, to explore with them the possibility of their using their corporate credit to assist us in meeting our payment obligations, and we explored this with the prime contractors and independently with the Westinghouse and GE corporations, who were the only qualified manufacturers of the propulsion equipment which goes into these cars.

I went to GE and Westinghouse separately and I indicated that we were prepared to enter into a contract with one of them, and I asked whether the GE and Westinghouse companies were prepared to extend credit in order to insure this business. In that case there were no foreign competitors at all. We explored this vigorously with every major supplier, and we continued to do so. The availability of corporate credit to assist the purchases of manufactured products, as I've said—forgive me for being redundant, is a customary business practice, and one that I thought it prudent that the MTA should engage in.

Access to Thyssen's credit, in the case of Budd, would have provided MTA some of the same benefits as the Eximbank vendor-related financing, to wit, security of financing source, flexibility with respect to MTA's ability to enter the long-term market during

more favorable market conditions, and a short-term reduction in the amount of overall New York public financing, including city and State financing competing for limited investor capital. The request was refused.

I might embellish for a minute. If the Thyssen Co. had been willing to support its subsidiary, it would not have been necessary for it to write a check. They could have issued or secured a letter of credit against which the MTA could have issued a tax-exempt instrument, and probably at a lower interest cost to us than that ultimately provided by the Canadian Government.

I might also add that in an effort to secure the maximum number of financing opportunities for us, and to enable Budd to have a more competitive position, I explored with the clearinghouse banks of New York the availability of credit from them to assist us in paying for the required purchase of subway cars. We could not work out a transaction in the amount of money required.

With respect to the actual offers made by the three companies, both Francorail and Bombardier offered approximately equal financing terms, including financing of 85 percent of the contract price, a 9.7-percent interest rate, and repayment over 10 years beginning after the last car was delivered. Budd offered financing for approximately 17 percent of the contract value, representing a portion of the value of propulsion equipment, undercarriages and car shells to be produced in Brazil and Portugal.

MISUNDERSTANDING OF SEEKING FOREIGN FINANCING

I'd like to clarify what may be some misunderstanding on this question of Budd seeking foreign financing. There are two things you should know. Before we approached and pursued vigorously the idea of foreign Eximbank financing with our three bidders, Budd had already indicated to us that for a variety of reasons, including price, that they wished to explore with foreign manufacturers the possibility of supplying major components to these cars. Last fall, long before these negotiations got underway, our engineers went down to Argentina at the request of the Budd Co., to examine a facility where the truck or the undercarraige of the subway car could be produced, according to Budd, to meet our specifications, and that was the truck that Budd proffered to us in their original proposal.

We examined the quality of the manufacturing down there and established test procedures and invested a considerable amount of money and time in an effort to determine whether that would be a satisfactory product. International events subsequently made it awkward or imprudent to consider that kind of contract with Argentina, and the Budd Co., shifted the location of its truck sourcing to a Brazilian company.

I might also add at this point, in discussions with Budd, they indicated to us when I asked them if they were willing to bid on the 1,150 cars, whether an order of that size, if we were to grant it all to one company, wouldn't result in substantial economies. They indicated to us that it would result in some economies, but that the major economies that would result would result not so much from the size of the order, but from the fact that they would manufac-

ture—if they got a contract for 1,150 or indeed even for 825 cars, that the Budd Co., would manufacture or assemble those cars in Martinsville, Va., and their stated reason to me as to the reasons why that would be cost-effective would be so that they would not have to deal with the United Auto Workers Union but they could deal with the Teamsters Union, to whom they would pay a lower hourly wage rate.

ABSENCE OF SUFFICIENT FINANCING

The absence of sufficient financing associated with the Budd offer made its proposal noncompetitive. Without an offer of Thyssen or other Budd-related credit and without MTA's bonds yet having been sold or indeed yet having been rated by the rating services in New York, we were not in a position to commit to a contract requiring payments from our own farebox revenues of $600 to $800 million within a 5-year time period.

As significant as it was, however, the availability of financing was not, itself, the only factor that led us to recommend Bombardier. There were other equally compelling reasons.

REASONS FOR RECOMMENDING BOMBARDIER

First, as a matter of prudent business judgment, MTA had considerable concern in placing so much of the responsibility for its 5-year program in any one single company. As noted before, MTA had already committed to Budd for the manufacture of 316 commuter cars, a contract which, together with Budd's other commitments, has filled all production capacity for the foreseeable future at Budd's Red Lion assembly plant. In fact, had Budd succeeded in this contract, as I indicated earlier, assembly would have taken place at a still-to-be-equipped facility using a work force yet to be hired or trained. This would have entailed additional risks of delivery and manufacture to MTA.

Second, MTA placed considerable emphasis on the economic impact of this contract to New York State. In this regard, Bombardier committed to spend at least $104 million for components manufactured in New York State, while Budd proposed New York State expenditures of $79 million, including the proposal for final assembly in Hornell, N.Y., a nonunion facility. And I might say, the Budd Co. has subsequently disputed that figure and indicated that had they gotten this contract, they could have indeed matched the amount of Canadian content, and I accept their word on this totally.

Taking account of both the labor-intensity of final assembly and the repeat orders likely to be generated from component assembly, it was the opinion of the New York State Department of Commerce at the time we made this decision that the Bombardier award would better serve the economic interests of New York State. In fact, as between the French and Canadian offers, Bombardier prevailed because of its emphasis on New York State content.

Third, the contract price offered by Bombardier was essentially equal to the Budd bid. While Budd has cited its low bid of $770,000, well below the Bombardier price of $798,000—and this difference has been cited in various press reports—the Budd figure does not

take into account certain contract provisions insisted upon by MTA relating to production risks, including the risk of nonqualification by Budd's Brazilian-manufactured truck, payment schedule and the use of New York State component supplies, which were included in the Bombardier bid.

Taking into account these factors, the Budd proposal was more accurately valued at approximately $799,000 per car.

Fourth, Bombardier had entered into a license agreement with Kawasaki Heavy Industries, so that its cars would be substantially identical to the Japanese cars that the MTA had already committed to purchase.

Similar engineering offers the advantage of compatibility with the other new cars in the MTA fleet with consequent benefits for maintenance, part inventory requirements, and the like.

In summary, it is MTA's judgment that the proposed Bombardier award was both in accordance with the statutory criteria established by New York and in the public interest.

What is more, it is a transaction of which we at MTA are extraordinarily proud. At a time when long-term tax exempt interest rates are at record highs and various New York City and State public institutions are competing for limited investor capital, we have secured an alternative source of capital to fund this urgently needed infrastructure improvement.

SAVING TRANSIT RIDERS $100 MILLION

By rejecting the traditional process of competitive bidding in favor of businesslike negotiations, we have saved the transit riders of New York—who, I repeat, are the only transit riders in this country that are asked to pay for new rolling stock through the fare box—at least $100 million in capital costs, as compared to the original low bid.

By reducing the cost of financing, we have saved on interest charges, assuming an MTA bond rate of 14 percent in excess of $90 million over the term of the financing. In 1987—when our savings peak—we will save every New York City straphanger a nickel a day in commuting costs.

Further, the Federal deficit also benefits substantially, because by securing a source of financing outside the traditional tax-exempt market we have reduced the amount of tax-exempt bonds that will be available to the public.

I recognize that this committee is concerned about the implications of this contract for the American economy, and I appreciate the legitimacy of this concern; let me address it.

It would be MTA's strong preference to award this and every other rolling stock contract to a domestic manufacturer. However, in the case of the manufacturer of subway and commuter cars, there is only one U.S. producer—the Budd Co.

We have a long relationship with Budd and hope it continues. They're a fine company, but there is as a practical matter a limited quantity of work that Budd can accept, and a limited amount that MTA is willing to commit to any single manufacturer.

I might add that there have been press reports indicating that the cause of the demise of Budd's domestic competitors was the

availability of foreign financing. Let me quash that thought. The other domestic manufacturers went out of business in no case because of foreign financing, because I'm not aware of any other rolling stock contract in this country that was financed through export credits extended by foreign countries to foreign manufacturers.

I am aware—as indeed you are, gentlemen—that every other major city in this country has purchased rolling stock from foreign countries with Federal funds—not with export credit from foreign countries backing those foreign manufacturers, but with U.S. taxpayer dollars financing foreign jobs.

The reason that these other companies, in my humble opinion, have ceased to exist was that the nature of the Federal financing program provided no transit property in this country with the ability to enter into long-term contracts, with the ability to insure any domestic manufacturer with any reasonable long-term business opportunity, and the investment that is required for any manufacturer of rolling stock is enormous.

The number of skilled engineers and employees that have to be retained in order to have the capacity to produce are dependent in large part on some reasonable assurance that there will be a continued availability of buyers, and buyers have been traditionally, in the last 12 or 13 years, particularly totally dependent on the authorization and appropriation process of the U.S. Congress.

ISSUE OF DOMESTIC ECONOMY DISTORTED BY PRESS REPORTS

Insofar as the domestic economy is concerned, it is my judgment that this issue has been somewhat distorted—again by recent press reports. Bombardier has promised to purchase components representing 40 percent of the car price in the United States, including undercarriages, gears, motors, brakes, air-conditioning, and the assembly related costs which will be incurred in Barre, Vt.

This compares to the "Buy America" requirement applicable where UMTA funds are involved, or 51 percent, and those who are familiar on the precise applicability of "Buy America" know that in fact a product attains a U.S. character sometimes, even though its sum component parts are manufactured abroad.

And everybody in the industry knows that the District of Columbia with 100 percent funding from the Congress of the United States purchased its cars from an Italian manufacturer, only 45 percent of which were manufactured in the United States.

It has been suggested that New York give up 85 percent financing at 9.7 percent interest. As I indicated earlier, New York represents the last major rail city in the United States of America to purchase foreign cars. Boston and Chicago have purchased cars from Canada; Philadelphia and Cleveland from Japan, and Atlanta from France.

I have been advised that Pittsburgh is about to award a contract to a German company, and I indicated already about the contract for the District of Columbia. What is the distinction?

Why is New York singled out for so much public obloquy? The difference is that we don't use Federal money. All of these other cars were paid for primarily with Federal funds. New York took the President at his word: Don't look only to the Federal Govern-

ment if you want to rebuild your system, find your own local resources to do the job.

We went out and made a business deal—one that the law permits, one that the President's policy encouraged us to make, and a deal that is clearly in the interests of the farepayers and taxpayers of New York.

Since the time that we made our decision, there have been a variety of actions taken and proposals introduced here in Washington which have a bearing on this contract which I'd like to comment on.

First, Budd petitioned the U.S. Department of Treasury to authorize the Eximbank to provide matching financing pursuant to section 1912 of the Export-Import Bank Act. In fact, it was I who originally advised Budd of this provision in the law. When we became aware of the fact that there was a possibility that Treasury might consider making a matching offer, it was between the time that I had shaken hands with the Bombardier Co. but prior to the time we had executed the contract, and I insisted that our contract with Bombardier be amended so that we had the right to terminate—not the obligation, but the right to terminate—the contract with Bombardier if the Eximbank were to make matching funds available.

And indeed in litigation brought by the Budd Co. in the southern district of New York, we entered into a stipulation with Budd in which we assured them that if there were matching offers that we would open up the bidding process. We made no commitment to them nor did they ever suggest that we have, that they would get the contract.

And I will comment on that in a couple of minutes, but we certainly indicated that we had an open mind.

My reasons for this were twofold: One, during that same period of time, it was suggested by other officials in the administration that this contract might possibly violate trade laws and might be subject to Presidential retaliation under section 301. We were all aware of the possibility of countervailing duties being imposed as a result of a process or legal procedure before the International Trade Commission.

We were aware of all that, and I thought it prudent that we give the Federal Government and ourselves an opportunity to discuss these issues and to see whether there was a way of resolving the problem in a way satisfactory to my Government in Washington, as well as my obligations to the people of New York.

My second reason was that MTA, as I previously testified, had not yet been assured of its ability to borrow money in the long-term market place and therefore any possible offer from the U.S. Eximbank of $650 million, the possibility of that could not properly be overlooked.

Anyone who lends us that kind of money has the first call to talk to me at any time of day or night.

As this committee is well aware, Secretary Regan announced last week that he would not authorize Eximbank to match on the grounds that the financing provided by the Export Development Corp. was not likely to be a determining factor, and this is a quote

from the Secretary of Treasury—"in MTA's selection of Bombardier over the American bidder, the Budd Co."

While Treasury's report did confirm that Bombardier was preferred over MTA for a variety of reasons, it did not state that MTA had notified Treasury that in the event matching financing was provided——I only hesitated, Mr. Chairman, because this is perhaps a new fact and an important one——

Senator HEINZ. Oh, a dramatic pause. [Laughter.]

Mr. RAVITCH. I indicated to Treasury that we had in this intervening period satisfied ourselves that Bombardier could produce its car 100 percent in the United States.

I recognize that the administration was not trying to help any single manufacturer, but if they were to provide matching funds it would be at least in part because of their concern about employment in the United States and domestic jobs, and that we were most eager—as I have testified—to produce that result, if we possibly could, obviously, ideally, to get the car award from the manufacturer we wanted. I so indicated that to the Treasury Department.

We believe that had a matching offer been made to the Budd Co., that a comparable offer would have had to have been made to Bombardier, U.S.A., and they were prepared to manufacture this car to whatever extent required to meet the necessary qualifications for eligibility under the U.S. Eximbank law.

Clearly, this Export-Import Bank financing, if available, should have been available to any supplier ready to produce in the United States. Our contract permitted us to consider Budd and the option also existed to choose Bombardier in an Americanized version.

I must also indicate that the French in the interim period advised us that their price, largely due to the devaluation of the franc, had dropped very, very substantially, and though they withdrew their offer of financing at 9.7 percent and indicated they would only finance at the consensus rate, the economic value of their proposal was most attractive. And indeed, had there been a matching offer and had we in fact taken new proposals from our three bidders, which is what we would have done at that point, it is very possible that the contract might have gone to the French, because they indicated that their price was so advantageous as to leave us no choice.

That also was a fact that I informed the Treasury Department.

MEASURES INTRODUCED TO DENY MTA ALL FEDERAL ASSISTANCE

I'd also like to comment, if I may, briefly, on two measures introduced in the Senate and now I understand pending before this committee, which are intended to deny MTA all Federal assistance for the duration of its financing commitment from Canada or approximately 15 years.

This legislation would retroactively impose such a penalty on any grant recipient which accepts below-consensus financing from a foreign country.

I should point out that with regard to whatever justifications there may be to such an action applied prospectively, the sole effect—should it be enacted as proposed—would be to deny the

benefit of hundreds of millions of dollars of critically needed Federal aid to New York City's straphangers, who I might add are Federal taxpayers.

It would not create a single American job, nor would it provide a single dollar of benefit to any American-based company. It would be the equivalent of the U.S. Government telling New Yorkers, "We won't provide enough Federal money to rebuild your system, but if you rebuild your system with money obtained in a way authorized by your State law, we'll take away the little Federal money that you've got.

I hope that the New Federalism has a stronger philosophical basis than this punitive proposal.

I'd be pleased to answer any questions you may have.

Senator HEINZ. Mr. Ravitch, thank you. I don't have any questions.

I may submit a few to you in writing. I think Senator Riegle may have a few questions. I have asked because we have run a little longer than we planned, principally because of votes, and I have another 4 o'clock commitment—I've asked Senator Riegle to continue to chair the hearing. You're to be followed by the Budd Co., as you know, so without further ado, I'm going to thank you as usual for your excellent testimony and turn the gavel over to Senator Riegle.

TOTAL AMERICAN JOB CONTENT FROM BOMBARDIER PACKAGE

Senator RIEGLE [presiding]. Thank you, Mr. Chairman.

I think what you said about contacting the Treasury Department and indicating that were they to grant the financing to Budd, that this would enable you to go back and work a better deal and in your opinion get 100 percent American job content out of the Bombardier package; is that correct?

Mr. RAVITCH. I indicated there were two possibilities or three possibilities, actually. I didn't know what Budd's new proposal would in fact be at that point, and I indicated—and it was obviously meant in good faith—that we would obviously sit down with them and see what they came up with.

They had, as I testified earlier, indicated that they could increase the New York State content, which was the disability in their first proposal. I had indications in their first proposal from Francorail that their price would drop substantially, though they withdrew their financing offer and Bombardier indicated subsequently that they were willing to make the cars entirely in the United States—100 percent if necessary—so we had three options available to us in the event there were such an offer.

I can't tell you for sure what I would do, although I think it likely that I would have taken the Bombardier offer to manufacture 100 percent in the United States.

Senator RIEGLE. But in any case it was your professional judgment at the time that if the matching financing had been offered, this would have put you in a position to reach a better contract on these subway cars that we're talking about; is that not right?

Mr. RAVITCH. I'm not sure a better one in economic terms. I'm satisfied that had there been matching funds, that we could have

reached an economically equivalent contract with Bombardier, but with the added advantage of being able to have all of the jobs in the United States.

Senator RIEGLE. And that really, as I understand the tone of your response, was what you think might have sought and perhaps been able to get if you had gotten a favorable decision from the Treasury?

Mr. RAVITCH. I think so, but I must emphasize that we had made a commitment to the Budd Co., and we would have kept it, and we would have certainly given Francorail an opportunity to come in and offer what was indicated to us to be a substantially reduced price.

Senator RIEGLE. I think this is an important fact, because I think it shows that the failure by the Treasury Department to come forward here prevented New York City and the country, I think, from gaining in this respect, because, let's say for example, let's say Budd had come in with a revised package that you had found to be the best. They would have ended up with the business. That would have been a help to this country and a source of substantial additional tax revenue to the Federal Government over a period of years.

If Bombardier had come back with a revised offer to have all the jobs in the United States, the same thing. It provides jobs here, puts people back to work, provides tax revenue, and that is a gain for the country.

So we missed that gain. We had a chance to get it, and we didn't get it, and I feel very badly about that.

You were here when the Treasury Department witnesses were here, and it is still not clear why our Government, the Treasury Department, let that slip away. You and I have had a chance to talk before, and we have had a chance to discuss this thing, and I think we understand each other. I think I have a fair sense of where your sense for your responsibilities from your vantage point, and I hope you do for me in terms of mine.

The point I would like to stress before we finish and get the Budd folks up here so they can tell their side of the story is: As a person who has fought as hard as anybody in the Congress for mass transit, and always did, without a single contrary vote, and have argued for it, have argued for it here, argued for it in the Budget Committee, what I have noticed in recent years is that our support is falling away. There are fewer and fewer people voting for it. It is tougher to rally the votes.

A lot of things relate to that. The economic condition of the country is a factor. There are an awful lot of people around here who serve in the Senate who don't get much mass transportation systems to their home States and to their communities, and they are finding it harder and harder to justify it.

As I have said to you in our conversations, I think the economy over whatever time period you want to talk about is a closed loop and that in the end actions that are good for a given community but adverse to the country eventually catch up to that community. That is just the way it works. And people in this country are going to have to be working and paying taxes to be able for us here at

the Federal level to have money to use for mass transit or whatever it is. And I am worried about that.

I mean, we are really caught in a terrible squeeze right now. The priorities are shifting anyway, because the Reagan administration, with the great interest in the defense budget, the neutron bomb, and all kinds of things there, as a result they are finding other uses for the money. But even short of that, we are finding that we are running out of money, and we are running out of taxpayers, and we are running out of jobs. And we are going to have to solve that problem, or what I am going to find here is that I am going to be one of the last votes around here for mass transit help, and it isn't going to make any difference because we are not going to have enough votes to help those people riding the subways in New York City.

I am not quite sure how we solve it right now, but I know this: if we don't solve it, this problem is going to get worse. I don't think it is sufficient to just sort of take it one decision at a time with respect to what maximizes the financial package for the city of New York, although I recognize that to be a critical element in this puzzle.

But somehow, among ourselves, we are going to have to decide how we take a broader view that is not counterproductive in the end, even to New York City's long-term interests. I care very much about the city. We fought here—those of us who care deeply about the New York City loan guarantees—for that legislation. We were finally successful. It was an uphill fight over a long time, and I would not relish wanting to have to get it through this Congress and this administration, because they are less inclined to want to favor that kind of thing.

So, I just want to sound those thoughts for you, because we are caught in the same dilemma here, and our operating latitude is going to shut down on us here unless we find a way to keep the broad national base of the U.S. economy as strong as we can make it. And we are sliding backward in that respect. Somehow we are going to have to get this turned around or we are going to start paying another kind of price. And I am worried about that, and I think you should be worried about it. I am sure you are.

Mr. RAVITCH. May I respond, Senator? I share your concern at the underlying economic problem. I would like to make a couple of observations. One is that I recognize that perhaps in this democratic system of ours that Government doesn't ultimately have one policy; it has lots of programs. When they are inconsistent with one another, it is difficult for the public and, indeed, some of us responsible for the administration of laws and public authorities to wend our way through these conflicting policies. But we have a system now which is with respect to public transportation a diminished Federal role.

As I indicated, New York State has moved in a rather dramatic way and one which I think set a precedent, as New York did in social legislation for many decades. It will set the standard for the rest of the country to follow, to deal with the most pressing and serious public infrastructure problems, of which public transit is only one.

BENEFITS OF LOCAL TAXPAYERS' FUNDS

But I think it should be noted at this hearing, Senator Riegle, that there are benefits as well as detriments, and the $8 billion that we are spending on our largely local taxpayers' funds are going to be spent largely in the United States to create substantial economic activity and jobs throughout this country.

I might point out for your interest that a substantial portion of this—I know your concern isn't parochial, but we have provided General Motors with 40 percent of its total bus manufacturing business in the last year and a half—no Federal dollars, local dollars—doing the same kind of thing, exercising business judgment on our part to get the best product at the best dollar. And we are following rules that are set by those people elected by the taxpayers of New York, and I think that is a valid system, given our Federal system, for allocating responsibility.

If the Federal Government wishes to make the rules, then they have got to provide the resources. I respectfully submit that it is unfair for the Federal Government to set proscriptive rules for the behavior of local transit properties in instances where the funds are being provided by local taxpayers, and I would hope that you and all of your colleagues would be aware of the fact that this $8 billion program is, with the exception of the subway car deals, going to be almost exclusively expended on the creation of construction and work in New York and the production of goods, buses, and all of the rail and signal and power-related facilities that go into the improvement of this vast rail network, and that the people of this country will be the beneficiaries of the hit that the New York taxpayer is taking in order to improve its mass transit system.

The second observation I wanted to make was that I made a proposal about a year and a half ago to the administration and to the Senate Banking Committee, suggesting that the Federal Government change its method of providing assistance, capital assistance, to local transit authorities and that legislation be enacted that would authorize UMTA to enter into long-term agreements with local transit properties so that those local transit properties can take those agreements, those contracts, to pay subsidy funds, as is done in the housing assistance area, Senator Riegle—to take those contracts, those promises of the Federal Government to pay money over a long period of time, to take those and borrow against them.

If the Federal Government had concurred in that, that proposal would have had no budgetary impact whatsoever, because the question of the level of authorization for such long-term contracts was a separate issue. Had that been considered by this committee or by the administration, we would have been able—we obviously would have complied with any rules that this committee would have set in such legislation with respect to domestic procurement, and we would have been able, with the United States, through a contract with the U.S. Government backing the issuance of our local tax-exempt debt, to go out and borrow at least at the interest rates equivalent to what we obtained from the Canadian company.

So, I respectfully suggest that there are ways independent of the level of authorization and appropriation by which the Federal Gov-

ernment could play a more extensive role in the improvement of infrastructures like public transportation and, I should say, in light of the failure to provide the credit or the cash would be entitled to set out the rules of the game.

But I look forward to the opportunity to work with you, Senator Riegle, and this committee, on any future plans that will enhance the amount of Federal funds that would be available for those of us in New York who continue to be in need of your assistance.

Thank you.

Senator RIEGLE. Thank you for your testimony today. I now call to the table the Budd Co. witnesses.

STATEMENT OF THOMAS DAVENPORT, CORPORATE COUNSEL, THE BUDD CO., TROY, MICH.; ACCOMPANIED BY PAUL SICHERT, CORPORATE VICE PRESIDENT, AND JAMES LUNDQUIST, SPECIAL TRADE COUNSEL

Senator RIEGLE. Let me welcome all of you to the witness table. I am going to let you identify yourselves as you begin your presentation. We are pleased to have you here. You have heard all the other witnesses testify so far, so I trust that in the course of your own presentations, if you have points to make with respect to the issues that have arisen by earlier witnesses, that you will comment appropriately on them.

Who will be leading off here?

Mr. DAVENPORT. I am Thomas Davenport, Senator. I thank you for the invitation and allowing us to be here. I am corporate counsel at the Budd Co., I am here with Paul Sichert, corporate vice president, and our special trade counsel in Washington, James Lundquist.

We have heard what was on previously and can react and speak to questions and perhaps clarify some points. We can easily speak to the question of whether there was likely to be a determining factor in the financing. We can speak to the other factors involved.

LACK OF EQUAL OPPORTUNITY FOR AMERICAN INDUSTRY

But we would like to say that the proposal introduced by you, Senator Riegle, and by Senator Heinz, as well as the House bill introduced by Congressman Blanchard and others, may have captured the essence of the problem that we see: lack of equal opportunity for American industry.

We have not received as a supplier the opportunity to sell our cars abroad in the recent decade. At home our industry has been materially injured by subsidized competition. We have lost two major contracts this year to subsidized financing. And just let me comment that there are other ways of subsidizing besides financing.

It is true of course that each community has a responsibility to make purchases on the basis of low price, high quality, prompt delivery, and American content and financing. However, when the financing is improperly subsidized or otherwise predatory, the competition can only prevail and U.S. competition can only look to the Government for administrative relief and application of effective trade laws.

Failure to respond with strong laws now to current conditions could jeopardize the survival of an industry, and the thousands of jobs under contracts, which under normal conditions and free market opportunity would be won by U.S. manufacturers.

I am summarizing, Senator. I would like to have you take in for the record our entire statement.

Senator RIEGLE. Your entire statement will be made part of the record.

Mr. DAVENPORT. Thank you.

Budd, on behalf of its industry, has placed considerable emphasis on trying to make the other parties and interests aware of the current inequities. We have been fighting for nothing more or less than fair treatment for U.S. industry and labor.

Given the possibility of winning, we will continue our investment of time and resources. Accordingly, we do support S. 2616, S. 2712, and S. 2732. We believe such measures can help to insure our ability for fair competition in our home market.

The urban transit authorities have a responsibility to buy based on what they perceive to be the best factors involved. What we emphasize is that when the financing is improperly subsidized or otherwise at a predatory level, it is and can be overriding in magnitude with respect to the other factors. In such cases American industry must look to its Government for corrective financial countermeasures.

The Budd Co., commends this committee for its interest in this matter. We feel that the legislation currently before you can provide a firewall against foreign predators who may misread U.S. policy as tolerating foreign subsidized exports.

That concludes the formal statement. May I just make one homily?

As far as this is concerned, we are talking about locking a barn door and it was our horse that was stolen. We shouldn't have to prove that our horse could pull the plough.

[The complete statement follows.]

TESTIMONY OF THE BUDD CO.

Mr. Chairman, Members of the Committee: My name is Thomas I. Davenport, corporate counsel to the The Budd Company. I am accompanied today by my colleague, Paul O. Sichert, Vice President-Public Affairs. We were in Washington yesterday and appeared before the U.S. International Trade Commission for the preliminary conference on our countervailing duty petition. We appreciate the opportunity you have given us to testify today on this very important issue. It is a matter of survival for The Budd Company and many of our domestic suppliers.

The pending proposals introduced by Senator Heinz and Senator Riegel, as well as the House Bill introduced by Congressman Blanchard and others, have captured the essence of the problem—Equal Opportunity for American Industry.

In country after country, in Europe and Asia, the American Industry has no chance of selling its railway passenger cars. Infortunately, this is also true of our good neighbor to the North: Canada. We as American manufacturers of railway transportation cars, have no equity in the international marketplace. The Budd Company has been materially injured by subsidized competition; in fact we have lost two major contracts this year due to subsidized financing. Unfortunately, a number of our trading partners, in addition to Canada, offer subsidies for purchasers of imported goods. It is true, of course, that communities have a responsiblity to make purchases on the basis of low price, high quality, prompt delivery, and American content. However, when the financing is predatory, or below agreed upon levels, the American competition must look to its Government for trade laws that provide equivalent opportunity. The pending Bills seem to provide equivalent financial

countermeasures necessary to correct this highly threatening situation. Indeed, failure to respond with stronger laws at this time could jeopardise thousands of jobs or contracts which, under normal conditions and free market opportunity, would be awarded to U.S. manufacturers.

In the recent quest for low price, many American communities seem to have lost sight of the fact that their revenues—taxes and payroll—come from the corporations and the workers in the community. Destruction of the companies, loss of the jobs, and displacement of invested capital will, in the end, destroy the tax base and reduce the very revenue public officials seek to protect. The bills presently pending before this Committee will go a long way toward correcting this situation.

Budd, on behalf of the Industry, has placed considerable emphasis on trying to make the Administration and the Congress aware of current inequities. We have been fighting for nothing more or less than fair treatment for U.S. Industry and Labor.

Let me state that we have faith in the American economy and our free market. We are willing to continue our investment of time and resources to assure our future and, we hope, to assure the future welfare of those who depend on us: our employees and production workers. Accordingly, we support S. 2616, S. 2712, and S. 2732 because we believe such measures can help to ensure our ability to compete fairly in our home market.

Urban transit authorities have a responsibility to buy based on low prices, high quality, prompt delivery and State or American content. However, when the financing is at a predatory level or below levels agreed upon among the member countries of the Organization for Economic Cooperation and Development (OECD) and the General Agreement on Tariffs and Trade (GATT), then the American Industry must look to its Government for trade laws which provide equivalent financial countermeasures.

The Budd Company commends the Senate Banking Committee for its interest in this matter. We feel that enactment of the legislation before you today will provide a firewall against foreign predators who may misread U.S. policy as tolerating foreign subsidized exports to our already depressed market.

Thank you, Mr. Chairman. That concludes my statement. If there are any questions, we will be happy to respond.

Senator RIEGLE. Mr. Sichert?

ATTEMPTED NEGOTIATIONS WITH TREASURY DEPARTMENT

Mr. SICHERT. Senator, thank you very much. We appreciate being here. I'd like to pursue a line of questioning with Treasury, in terms of their availability and their willingness to sit down with us on a person-to-person basis during negotiations. And for the record, I've given this to your staff.

Representatives of Mr. Cornell were called in mid-June, at which time we asked for a meeting. He said no.

We called Mr. Cornell 1 eek later at the suggestion of the Office of the Special Trade Representative to see if such a meeting with Budd executives could be arranged. The answer, again, no.

We called Mr. McNamar's office on July 1, seeking a brief meeting with him. We were refused.

We called Mr. McNamar's office on July 6. We were, again, refused.

We had a letter personally delivered to the Secretary of the Treasury at his vacation retreat seeking an immediate meeting between himself and the principals of our company. That request was never answered.

We did receive a phone call from the Treasury's Public Relations Office on the morning of July 13, 10 minutes prior to their press conference, announcing their decision was negative on behalf of the Budd Co.

On July 15, staff of the Treasury Department received a letter from Mr. Cornell, saying, in his opinion, a meeting with company representatives was unnecessary since they, indeed, had a number of papers they considered relative to the case and included for our benefit a copy of the Treasury report and the press release.

I will introduce, for the benefit of the Senators and the staff, a letter from our president, Mr. McNeal. And I will abstract from that only in part.

Senator RIEGLE. Let me just stop you right there, because I want to make that letter a part of the record.

[The complete document follows:]

THE BUDD CO.,
Troy, Mich., July 16, 1982.

Hon. DONALD T. REGAN,
Secretary of the Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C.

DEAR MR. SECRETARY: I am sorry that our failure to obtain an appointment with you necessitates use of a letter to put before you The Budd Company reaction and response to your statement to the press of July 13, relative to the order for 825 subway cars placed by the New York Metropolitan Transit Authority (MTA) with a Quebec firm, Bombardier, Inc. Regrettably, we find your statement to be misleading and inaccurate in many ways. It is unfortunate that both the statement and your determination were made without direct consultation with Budd or Budd's counsel since we feel that consultation would have clarified the facts and, therefore, resulted in a very different finding.

Among the inaccuracies in the statement are the following:

1. The MTA did not award a contract to Kawasaki Heavy Industries in late 1981 for the building of 325 rapid transit cars. The facts are: In November, 1981, the MTA opened negotiations on a contract for the building of 1150 rapid transit cars. Kawasaki Heavy Industries and The Budd Company both offered bids on this contract by January 5, 1982. Subsequently, the MTA split off 325 cars from that original offer to negotiate and on March 17 awarded a contract for their construction to Kawasaki Heavy Industries of Japan. One of the determining factors in that award was a buyer's credit issued to MTA by the Ministry of International Trade and Industry (MITA), A Japanee government entity, for 9 percent per annum financing. This financing was not below the internationally agreed upon levels applicable to Japan, and we are informed was not even substantially below commercial rates available in Japan. Under the circumstances, The Budd Company did not challenge this rate as non-competitive financing. After the split off of these 325 cars, The Budd Company, Francorail, and Bombardier, Inc., of Canada, continued to negotiate with MTA for the remaining 825 cars.

2. In the third paragraph of your statement, you state that The Budd Company filed suit in the United States District Court for the Southern District of New York after MTA and Bombardier, Inc. had signed the contract for the construction of the 825 rapid transit subway cars on June 10, 1982. The facts are: The Budd Company filed suit on Tuesday, June 8, 1982, and a hearing was held on June 10 before Federal Judge Charles Brieant upon notice, and with the appearance of the MTA and its chairman. The purpose of the suit, and the outcome thereof, was the delay which allowed the Treasury Department the time to make a determination under Section 1912 of the Export-Import Bank Act, 12 U.S.C. 635 (a). This effect was achieved by the insertion in the contract between MTA and Bombardier, Inc. of a clause allowing the board of the MTA to re-open the contract if matching funds were made available to The Budd Company by the Eximbank on or before July 15, 1982. This clause was elaborated upon by a stipulation entered by the parties and approved by Judge Brieant. At the hearing in open court on this matter, counsel for the MTA stated that, if financing were made available to Budd, the MTA might actually have a better offer before it than it had from Bombardier, and characterized such an event as happy for Budd and, perhaps, happy for MTA. In affidavit to the Court, MTA Chairman Ravitch stated that the savings to MTA from the Canadian financing would be approximately $92 million and that, therefore, Budd could not be awarded the contract, as such award would result in a loss to the taxpayers of the State of New York of that amount.

3. It appears to us that you have ignored the effect of the stipulation entered into by MTA, Budd and Bombardier in Federal Court in New York in making your deci-

sion. That stipulation provided that, if matching financing were made available to Budd by the Eximbank, MTA would re-open the negotiations in the matter.

The question for your determination, therefore, was whether financing would be likely to be *a* determining factor in the award of the contract. Both the statements of the MTA in Federal Court in New York and your determination indicate beyond a doubt that financing was a determining factor when MTA Chairman Ravitch made an announcement in May of his recommendation of the contract award to Bombardier, Inc. and was a determining factor in the actual award of the contract to Bombardier, Inc. at a public hearing by the MTA Board on June 11, 1982, at which time Mr. Ravitch stated for the public record that all three bidders (Bombardier, Inc., The Budd Company, and Francorail) were fully qualified to build the 825 rapid transit cars.

Since the stipulation between the parties entered into and approved by Federal Judge Brieant contemplated complete reconsideration of new offers by Bombardier, Inc. and Budd, it is, in our view, highly inaccurate for you to determine what the result of said offers would be, both as regards to design of the vehicles, using Japanese technology, or the New York State content which might be offered by Budd. (On the latter point, you will find that the record of the MTA hearing held on June 10, shows that Budd stated that its New York State content is 19 percent or approximately equal to that of Bombardier. As far as we know, that statement has not been refuted.) As for the supposed superiority of Japanese technology, it hardly seems likely that you or your advisors are competent to make any determination whatever on the question. It should have been left to the Board of the MTA who, as noted above, speaking through their Chairman, Mr. Ravitch, have stated that Budd was fully qualified to build the cars.

It is clear that the illegal non-competitive financing offered by Bombardier and the Canadian government was and is *a* determining factor in the award of this rapid transit car contract. The statute does not require you to determine whether such non-competitive financing is the determining factor. The reason such a finding is not required or contemplated is clearly that Congress would then require that you enter into just such questions of technology a you have in this case. Moreover, you have done so with no input from the The Budd Company.

Your statement and the decision indicate that of the seven factors you listed as determining, the first and second are (1) availability of the subsidized Canadian financing and (2) the cost of said financing. Thus, your determination that the financing is not a determining factor, when you yourself list it as two determining factors is a travety of the statute enacted by Congress to help American industry, not to hurt it by casting aspersions on its technology.

Had you, or any of your delegates, made inquiry of The Budd Company before this determination was made, something which The Budd Company, both for itself and through counsel and other intermediaries requested repeatedly, your statements and findings might have been accurate at least on the facts of the matter. What you have done is to leave The Budd Company worse off than it would have been if it had not exercised its federal rights in this matter. If this is to be the interpretation of what Congress intended by enacting Section 1912, it seems certain that no United States company will ever try to use it again.

Some additional comments on the seven major factors cited in your statement:

Price of the car.—Budd maintains that its bid price for the total contract was $27 million lower than the next lowest bidder. After the prices were disclosed, however, Bombardier was permitted the opportunity to improve its bid and did improve it by nearly $5,000 per car. Budd was not offered this opportunity and instead its indicated bid price was increased by $23,337 per car with the notation that a price reduction of that amount would be available if the truck manufactured by Budd's Brazilian supplier passed the NYCTA qualification test. During negotiations, the technical people of the NYCTA agreed that the proposed Brazilian supplier was fully qualified to produce the proven truck design and the MTA bid award announcement of May 18 made no mention of any qualification of the Budd price, which was listed as $770,768.

Delivery schedules, including reliability of delivery.—Budd's final delivery is scheduled to be October, 1986. Bombardier's final delivery is scheduled to be May, 1987. Apparently, the fact that Budd is running behind scheduled delivery on some current contracts is being used to bring into question Budd's reliability even though we have pointed out that the delay was caused by a 205-day strike of our brake supplier whose equipment, by the way, is specified by the NYCTA. It should be noted that the NYCTA has been equally hampered in obtaining parts for this same equipment for maintenance purposes. Neither you nor the MTA have any basis for a determination that Bombardier will be free of any strikes or factors beyond its control which might delay

delivery. In addition, the contract contains a stiff penalty for late deliveries to which Budd will be subject if it fails to meet the schedule.

Quality of Design, etc.—We believe this point is answered with the statement by Mr. Ravitch that he considered Budd to be a fully qualified supplier.

Possible overdependence on a single supplier.—It would seem to be only reasonable to assume that if the MTA had any legitimate concern on this point that Budd would have been disqualified at the outset, not after weeks of negotiations during which time Budd was continually encouraged by MTA to persist in its efforts to win the contract award.

In conclusion, we have been forced to the realization that our government pretends to be the friend of American business but in reality is anything but. President Reagan has said that the country should look to the private sector to be the engine to pull us out of recession, but the rest of the administration seems not to hear. Instead of help and encouragement, we are maligned for all manner of alleged inadequacies despite the fact that we have built 11,000 railway passenger cars of stainless steel over the past 50 years and Bombardier has yet to build any. Perhaps you do not place any importance on the fact that all other American producers of this type of equipment have withdrawn from the field. Budd is the only one left and you may be sure that this type of unfair competition may very well result in our following the others, leaving the market totally to the foreigners.

In consideration of all of the above, we are requesting timely response to the following requests:

1. That the report be amended to reflect the correct statements of fact outlined in this letter.
2. That this amended report be forwarded to the Department of Commerce and the International Trade Commission so that the correct facts are used in the countervailing duty petition case.
3. That you review your decision on the basis of the facts presented.
4. That you furnish me with a letter which I may forward to our Unions and employees correcting the implication that Budd's American workers are producing unsatisfactory quality as compared to the Canadians.

Sincerely,

J. H. McNeal, Jr.

Senator RIEGLE. I just want to nail this down.

Your testimony is that on those occasions which you have just cited the Budd Co. did contact Mr. Cornell, asked for the meeting, and was unable to get a meeting?

Mr. SICHERT. The Budd Co. or its authorized representatives; that is correct, sir.

Senator RIEGLE. I just want to interrupt for a minute, because I notice the gentleman from the Treasury Department is still seated in the back of the room.

I am just wondering—you have just heard what was said here. Of course, when you were at the table, you indicated that no such request was received to your knowledge for a meeting.

You've just heard what Budd has said.

Is this new information to you?

Mr. BARBER. Yes, sir.

Senator RIEGLE. May I ask you, before we finish today, while the committee record is still open—there's a phone here in the back of the room which you're welcome to use—I'd appreciate it if you'd call Mr. Cornell and establish his response to this, because I would not want your response to remain on the record today if it's not accurate. And I think you ought to have a chance to correct it if it needs correcting.

And if Mr. Cornell's assertion is to the contrary, then I would want to have that as well.

I would ask if you would make that call so that we can have a response directly.

Mr. BARBER. I'll do that, Senator.

Senator RIEGLE. Thank you.

Mr. SICHERT. If I may continue briefly, on July 16 our president wrote a letter to Secretary Regan—in part I'm quoting here—"We find your statement to be misleading and inaccurate in many ways. It is unfortunate that the statements you made were made without direct consultation with Budd."

That letter, which we just talked about, concludes on four points on which we're still awaiting an answer from the Secretary of the Treasury's Office:

"Number one, that the report be amended to reflect the correct statements of fact outlined in this letter.

"Number two, that amended report be forwarded to the Department of Commerce and the International Trade Commission so correct facts are used in the countervailing duty case.

"Number three, that you, the Secretary, review the decision on the basis of the facts presented.

"And number four, that you, the Secretary furnish me, James McNeal, a letter which I may forward to our unions and employees correcting the implication that Budd's American workers are producing unsatisfactory quality as compared with the Canadians."

I think, sir, that perhaps throws some new factual light.

Senator RIEGLE. I think it's important that that letter be made a part of the record.

Mr. SICHERT. It shall be, sir.

Senator RIEGLE. Prior to the July 13 decision by the Treasury Department not to authorize Eximbank financing terms, what contact did they have with you? What contact did the Treasury Department initiate with Budd?

Mr. SICHERT. There are a number of letters attached to the Treasury document showing that the Budd Co., indeed, made its position clear by letter.

What obviously, in our case, was not done was the ability of the U.S. Treasury Department to avail itself of a meeting with the Budd Co. upon a number of requests.

Senator RIEGLE. Did they call you on different occasions to seek information?

Mr. DAVENPORT. I know of no attempt to invite, let alone ask for an input from the Budd Co.

Senator RIEGLE. So, as far as you know, your testimony is that you did not receive any communications initiated by the Treasury Department to Budd; is that correct?

Mr. DAVENPORT. Nothing in the way of an invitation or a suggestion that it was possible that we could make a further input—from the initial information—we were not aware, Senator, that this was a partisan consideration. We were not aware that there was further contact and further discussion with, for example, MTA.

It seems to us that this was a situation where a factor of a significant and overwhelming magnitude was only being considered, whether it was A—not B, A—likely—not the, the determining factor, but A, likely to be a determining factor.

Senator RIEGLE. So—I just want to be clear that I understand what you're saying—is it your testimony that you did not receive phone calls from the Treasury Department seeking either information or any other contribution that you might be able to make?

Mr. DAVENPORT. That's correct.

Mr. SICHERT. It appears that, despite repeated requests by phone and letter from the company, that Treasury did not respond.

And I happen to agree with your earlier statements, that there was no self-initiation in the Treasury to seek out the Budd position, which certainly would have been the other side of the issue. In a sense, were treated as if we were in a vacuum.

Senator RIEGLE. I want to go through the charges that have been made by the Treasury Department and give you an opportunity to respond to them, item by item. I think it's important that that be on the record.

But before we do that, how long has Budd manufactured stainless steel cars?

Mr. SICHERT. Approximately 50 years. We've produced 11,000 cars of 273 different types and today still have licensees in several foreign countries that produce stainless steel. It is a very difficult art. It is not an easy one.

Senator RIEGLE. I notice that Treasury Secretary Regan claims that Bombardier's quality would be higher than yours.

They haven't built any stainless cars yet. I wonder what he bases that finding on?

Mr. SICHERT. I'm not sure, sir. I don't know if that is the Secretary's prerogative to make that decision. No representatives of Treasury have ever visited our plant.

Senator RIEGLE. How significant are the technical differences of fabricating cars out of stainless steel versus other kinds of metals which would have been, say, the previous experience of Bombardier?

What's involved here in terms of working with stainless steel and making that?

Mr. DAVENPORT. The significant problem is in the welding of stainless steel as compared to the welding of carbon steel. It was the Budd Co.'s innovations in welding, in resistance welding, short input pulse welding, that made stainless steel fabrication possible for those components in those areas which would be presented as the surface.

It is very difficult to keep the heat affected zone of a weld from deteriorating the strength of a stainless steel structure.

Senator RIEGLE. I have to recess this hearing long enough to go and vote. Then I'll be back.

So, it will probably be 7 or 8 minutes.

Let me invite you to take a break during that time if you wish.

What I'd like you to do when I come back is prepare to take, item by item, the points that the Treasury Secretary has listed. And I'd like you to take each one, and I'd like your response to it.

So, when I come back, that will be the order of business that we'll follow.

Mr. SICHERT. Yes, sir.

[Recess.]

Senator RIEGLE. When we left, I had asked you then if you would take the points, item by item, that the Treasury Secretary raised. And I'd like you to respond to each one if you would.

Mr. SICHERT. We shall do so and be as brief as possible in view of the hour, sir.

Mr. DAVENPORT. With respect to the factors perhaps—is that what you're referring to?

As I said, there were seven factors that supposedly were considered by MTA.

Senator RIEGLE. Should we go right down through them?

Mr. DAVENPORT. Fine.

Senator RIEGLE. Here are the items:

TREASURYS' ARGUMENTS FOR AWARDING CONTRACT TO BOMBARDIER

Availability of financing; cost of financing;. price; delivery schedules; quality; overdependence; New York State content.

CONTRARY VIEWS OF TREASURYS' ARGUMENTS

You know what their assertions were. And I'd like to hear any contrary view that you might have on any of these.

Mr. DAVENPORT. We'll take them from the bottom up.

New York State content, for example—I think we can shorten that, because Mr. Ravitch today very candidly said that he found that would have been acceptable on the part of the Budd Co.—perhaps later than he would have liked it to be clear to him, but he did say that he would have found that acceptable.

Who would have reemployed people at Hornell, N.Y., for assembly of the cars?

Mr. SICHERT. 550 workers were at issue here versus about 160 at Barre, Vt.

Incidentally, that particular issue is the only one of four that is allowed under the New York statute in terms of the MTA negotiations, not seven, as outlined in the Treasury report.

Senator RIEGLE. So, your point is that you were prepared to offer, either matching or higher, New York State content?

Mr. DAVENPORT. I won't say emphatically higher. It would have been as close so that the difference we would be quite sure would not have been a determining factor.

Senator RIEGLE. The difference would have been negligible?

Mr. SICHERT. Within a percentage point, sir. I think it was 19 or 20 percent, which is a very close point.

However, we would have actually employed New York State workers, and that would have been a great difference over the Canadian company's employment of people in Vermont, not New York State.

Senator RIEGLE. All right.

Which fact would you like to take up next?

Mr. DAVENPORT. As far as those in the statute authority by MTA delivery, our delivery was earlier, and that has not been contravened by anything that's been said here by MTA or any other fora.

Senator RIEGLE. How could they charge that you did not have the edge there? They claim you're behind on your deliveries.

Wasn't there a strike?

Mr. SICHERT. Let me make that clear. There was a strike against the entire industry for 205 days by a major brake supplier based in Pittsburgh that affected the delivery schedules of the entire industry, including the delivery of spare parts. That pipeline is not yet filled up.

Senator RIEGLE. Is that the principal reason for any delay that you are incurring now on cars?

Mr. SICHERT. That is the principal reason. We are happy to say that as of today we delivered our first subway cars to Baltimore. And in previous delivery history we had been, indeed, earlier with our deliveries to Amtrak—and under budget.

That is our delivery history experience, sir.

Senator RIEGLE. So you're saying, then, that there is every reason to think that your claim for more rapid delivery was a claim that you could, in fact, carry out?

Mr. SICHERT. Based on our continual experience with a variety of transit properties; yes, sir.

Senator RIEGLE. What's your response to the overdependence?

Mr. DAVENPORT. Budd was found to be qualified at various times and reiterated very recently by the MTA. If this had been a factor to disqualify Budd, it would have been early on and we wouldn't have had to invest as much time and effort as we had.

Mr. SICHERT. I think Mr. Ravitch, again today, mentioned that if the funds had been available he would have been willing to negotiate with Budd.

Senator RIEGLE. I think he did make that clear.

How about the quality issue?

Mr. DAVENPORT. We have made, as you have also recognized, many, many cars. There are problems at times with cars. We've corrected those problems. We believe that the quality of our workmanship by our workers and our designs are the best.

Senator RIEGLE. Is there any independent basis in fact challenging that? Or is anybody challenging that?

Mr. SICHERT. It is a very subjective opinion. The only thing we can say is we have a highly skilled, trained work force of 2,000 people at our Red Lion plant of UAW/CIO who represent them.

It takes quite a bit of training to take someone to produce a subway car. And we're proud to say that we were able to convert 600 workers away from the automotive industry who would have lost jobs and retrain them, over a year and a half, to produce subway cars.

Mr. DAVENPORT. I might say, with respect to Hornell, N.Y., where the cars would have been assembled, that that was a facility which was engaged in the refurbishing of railway cars. It had a work force which unfortunately has been laid off because that facility is being abandoned.

Senator RIEGLE. How could anyone assert with any sense of certain knowledge that Bombardier could out-produce you from a quality point of view using stainless steel, which they've not done before?

Mr. SICHERT. We fail to see the logic in that, sir, because as of this moment neither Kawasaki nor Bombardier have produced a prototype car of stainless. So, it's a very subjective judgment, which we find no basis in fact of. And we had, indeed, produced 600 stainless steel subway cars for the New York City transit system, a fact which has been frequently ignored.

Senator RIEGLE. What's been the performance record on those cars?

Mr. SICHERT. Absolutely perfect. We've heard of no breakdowns and no problems whatsoever in the 20 years of service in which they've been on that particular property.

Senator RIEGLE. Let me ask you this—on the price issue. There have been suggestions here today that, really, there's no price differential. But that sort of gets fuzzed away.

What is your own bottom line assertion on price per car here as it would relate to the point at which this decision was going to be made?

Mr. DAVENPORT. Our price was $23,000 per car lower than that of Bombardier.

With respect to the submissions, why we were using components which were either qualified or qualifiable, and with respect to the pricing which we were aware of concerning the Bombardier bid, seemingly at some point there have been other considerations in the determination of price used by MTA which made our prices closer.

It would seem that regardless of some changes in the pricing that the difference became a negligible factor.

Senator RIEGLE. So, what does that mean? What do you mean, "the difference became a negligible factor"?

Mr. DAVENPORT. It couldn't have been of the same preponderance of effect as $100 million or $250 million difference in the financing.

If we had been given the opportunity to have considered alternatives, as perhaps Bombardier was, we could assure MTA and you, Senator, that our price would have been the best.

Senator RIEGLE. So if the Treasury Secretary found differently, and MTA has indicated here today that they were prepared to resume discussions with you, what is your opinion as to what you think would have happened next?

What was Budd prepared to do?

What is it likely it would have done at that point?

Mr. SICHERT. We would have gone back to negotiations, because we felt very strongly—and it's been repeatedly reported—that we had the best delivery, the best price—excuse me, the highest U.S. content: 80 percent, versus the 40 percent that the Canadian company had offered—and would have been prepared to sit down with MTA and renegotiate that contract.

But we were, as you know, denied the opportunity because of the events that happened on July 13.

Senator RIEGLE. Let me say this. I'm of course very troubled about this case, as you're aware. We've talked about it before and we've taken a number of actions, and we're going to continue to work on this case and others like it, on into the future, because there are a number of fundamental questions that are posed for the country.

I think the decision by the Treasury Department is wrong. I think it was unfortunate. I think the fact that they did not sit down with you is just really an amazing fact. And I think they should have. And I think that not only in response to your request but even had you not asked, I would have thought they would have taken the initiative to do so.

In any event, before I close, let me just inquire again of the representative who is here from the Treasury Department.

Have you had a chance to talk to Mr. Cornell?

Mr. BARBER. Bob Cornell? Yes, I did. I was only able to speak with him on the phone, and was not able to get to the office of the Secretary or the Deputy Secretary to confirm the statements by these gentlemen on those calls; but I will do that.

In the meantime, Deputy Assistant Secretary Cornell confirmed that he was called in June, as the Budd representatives have stated. He also added that in the 2 weeks or so before the decision was announced by Secretary Regan, he was in virtually daily telephone contact with attorneys representing the Budd Co.—and he believes, in one or two cases at least, with employees of Budd itself.

But he says that in his recollection, there was never a direct request for a meeting. These calls were always phrased in terms of questions as to whether we thought a meeting would be necessary, or useful, or whether there was anything in addition that we needed, beyond what was already available to us.

As we said earlier, we had the impression that we had a fairly complete record of the case, as seen from the Budd point of view. So, our response to that was no. On the letter that the Budd Co. received from Mr. Cornell after the decision was announced, I am not certain, but I believe that that was in response to an inquiry from the Gray public relations firm, offering to facilitate a meeting with the vice chairman of Budd, if we considered it to be necessary.

And so, again, there was an offer to do so rather than a direct request for a meeting.

Now, I will check further on the calls to the Deputy Secretary's Office and the letter to Secretary Regan. I have no information on those at this point.

Senator RIEGLE. I appreciate your trying to establish this. I want to get the rest of the information.

And so, let me officially ask you to do that for the record.

Mr. BARBER. Certainly.

Senator RIEGLE. I am also going to ask, for the record, a direct request of Mr. Cornell: That he prepare a chronology or a complete recollection, reconstruction, of contacts that were made, so that we have what you just reported: A written form from him that's complete, that would cover any contacts that were made, any requests for meetings, any suggestions of the possibility of meetings, and so forth.

Mr. BARBER. I'll do that, Senator.

Senator RIEGLE. Also, I would be interested, too, in having you provide for the record, if you can for us, a description of the decision process that took place here. In other words, I would like to be able—and I know my colleagues on the committee, on both sides would like to understand better—how this matter was handled internally, in terms of the decision process itself.

For example, I raised the question as to whether an effort had been made to solicit comment from other Cabinet officers. The response here today was that that had not been done.

But things of that sort, I would like to have as complete a description of exactly how this matter was handled, who handled it, over what time period, and so forth, so that we really understand fully how the Treasury Department handles a matter of this kind, not only to try to better understand what was done in this case, but in terms of the adequacy of the process for the future.

I want to say to the Budd people: I know you have been very patient today. I know you have planes to catch later. We are going to be submitting additional questions for the record, to all the witnesses today. We will be contacting the Treasury Department and other administration departments, as necessary. So, I just wanted to make that clear.

So, as would be expected, we would be anticipating full responses for the record.

With that, I want to thank you for appearing today. And I'm sure that we'll have occasion to discuss this matter further.

This committee stands adjourned.

[Whereupon, at 5:10 p.m., the hearing was adjourned.]

[Additional material received for the record follows:]

Department
of the Treasury

RESPONSE FOR THE RECORD

SENATE BANKING COMMITTEE HEARINGS, July 22, 1982

Chronology of contacts with the Budd Company

May 17 afternoon -- J. P. Doane, Treasurer of Budd, called John Lange to report imminent award of contract to Bombardier.

May 17 evening -- Telex received by Lange from Budd, confirming telephone conversation.

May 24 Letter received from Mr. Doane, expanding on information contained in telex and presenting facts as seen by Budd.

May 24 Letter sent to Mr. Doane by Mr. Lange, acknowledging Doane's letter and telex, informing him that investigation was under way, and asking that he keep Treasury informed of any new information.

(May 28 Treasury heard, and obtained copy of, testimony by Mr. Doane before the Senate Finance Committee.)

Early June -- Treasury obtained copy of Budd Company's countervailing duty petition of June 3.

June 11 Attorney Robert Smith, representing Budd, called Mr. Cornell.

June 11 Mr. John Galvin, of Barnes, Richardson and Colburn (representing Budd) wrote Mr. Lange, forwarding copies of: Francorail's statement at the June 10 MTA hearings; copies of depositions made in Southern District Court by Messrs. Ravitch and Polan, of MTA; and a copy of the MTA/Bombardier contract.

June 13 Mr. Lange received letter from Mr. Doane, of Budd, forwarding a copy of Doane's testimony before the MTA Board on June 10.

June 16 Mr. Lange received letter from Mr. Doane, forwarding copy of the Francorail statement at the June 10 MTA hearing.

June 23 Attorney Robert Smith, representing Budd, called Mr. Cornell.

June 29 Telephone call from Mr. Doane to Mr. McNamar referred to Mr. Cornell, since Mr. McNamar was out of town.

July 1 Telephone call to Mr. McNamar from Attorney Robert Smith, representing Budd, referred to Mr. Cornell.

July 6 Secretary Regan's office received letter from Robert Gray, Chairman of Gray and Company, a public relations firm, offering to arrange a meeting between Secretary Regan and the Vice Chairman of Budd "if this would be useful and appropriate to help reach a timely decision...."

July 15 Response mailed to Mr. Gray thanking him for his offer but saying meeting was unnecessary.

July 19 Secretary's office received letter from president of Budd criticizing the decision. Reply now in progress.

In addition, there were almost daily telephone calls to Mr. Cornell from Mr. Robert Smith in the two weeks prior to the Secretary's decision on July 13. Some of these calls were returning Mr. Cornell's calls. No call from anyone at Budd went unreturned; usually calls were returned on the same day.

While the Treasury staff was unable to keep detailed telephone logs because of the volume of calls, Mr. Cornell recalls that the essence of nearly all the calls from Mr. Smith and others was to ask whether the Treasury had all the information necessary, and whether any further assistance was needed. While the Budd representatives on several occasions offered to meet, Mr. Cornell does not recall receiving any requests to meet. While the Treasury staff would not of course have refused any requests, we did not believe meetings were necessary.

Finally, there were almost daily telephone calls from Mr. Andrew Vance of Barnes, Richardson and Colburn to Russell Munk, Assistant General Counsel, International Affairs, for three to four weeks prior to the decision. In these calls, Mr. Vance generally said that it was very important for a decision to be made as soon as possible and asked when a decision would be reached and whether he could furnish any further assistance. Several days prior to the decision (on July 7 and 8, according to Mr. Vance) when he was in Washington on other business, Mr. Vance asked Mr. Munk if he could stop by Mr. Munk's office to get acquainted and for a meeting. Mr. Munk indicated to him that he did not think, since the matter had been submitted to the Secretary for a decision, that there was anything to be gained relating to the matter from a Munk-Vance meeting, and no such meeting was held.

RESPONSE FOR THE RECORD

ANSWER TO QUESTION RAISED BY THE HONORABLE DONALD W. RIEGEL, U.S. SENATOR FROM MICHIGAN

Treasury's Decison-Making Process in Section 1912 Cases

On the afternoon of May 17, 1982, John Lange, Director of the Office of Trade Finance, U.S. Treasury, received a call from John Doane, Treasurer of The Budd Company stating that a Canadian firm would shortly be announced as the winner of a major contract to provide subway cars to the Metropolitan Transportation Authority of New York. Mr. Doane declared that award of the contract was determined by subsidized financing, a 9.7 percent U.S. dollar loan from the Government of Canada in violation of international agreements, and requested invocation of Section 1912 of the Export-Import Bank Act. He said France had apparently made a similar 9.7 percent offer. He confirmed this by a telex that evening.

At the opening of business May 18, Mr. Lange instructed Edwin L. Barber III of his staff to prepare memoranda to the Assistant Secretary for International Affairs, informing him of developments and of the actions required under Section 1912. He also instructed Mr. Barber to prepare a telegram to the American Embassies in Paris and Ottawa, requesting that they ascertain the facts concerning French and Canadian financing offers to the MTA. If these offers were, in fact, in contravention of international agreements, the embassies were requested formally to request that the financing be made consistent with the agreements. The telegram was dispatched May 20.

Replies were received, by telegram and telephone, by May 25. On that day, the Treasury convened a meeting of agencies concerned with the issue -- the Departments of State, Commerce, and Treasury, the Office of the U.S. Trade Representative, the Export-Import Bank, and the Office of Management and Budget -- to consider policy options open to the United States for dealing with it. USTR undertook to draft a paper setting forth the options, with arguments for and against each.

At about this time R. Tim McNamar, Deputy Secretary of the Treasury, briefed several high-ranking leaders of the AFL-CIO on this issue. On May 28 Mr. McNamar testified

before the Committee on Finance of the United States Senate. To prepare for these hearings, the staff of the Office of Trade Finance, as well as Deputy Assistant Secretary for International Trade and Investment Policy Robert Cornell, had been in frequent telephone contact with the U.S. embassies in Ottawa and Paris, as well as directly with representatives of the French and Canadian governments. The results of these contacts were reflected in Mr. McNamar's testimony May 28.

On June 3 a Canadian Government delegation led by Mr. Percy Eastham, an Assistant Under Secretary for External Affairs, met with a U.S. delegation headed by Mr. Cornell, Deputy Assistant Secretary of State Dennis Lamb, and Mr. Donald de Kieffer, General Counsel of USTR; other members of the U.S. delegation included Mr. John Duff, Senior Vice President of the Export-Import Bank, and representatives of the Departments of Commerce, Transportation, and Labor, and the Office of Management and Budget. The Canadian objective was to present their view of events and explain why the Canadian financing offer was not a violation of Canada's international commitments. The U.S. goal was to ascertain the details of, and reasons for, the Canadian financing offer, and to persuade them to make it conform to international agreements. The result was a standoff.

Just prior to the meeting, the U.S. Export-Import Bank received from the French Government a detailed telex message explaining the history of the French offer. A copy was passed to the Canadian delegation before it left Washington. Mr. Eastham undertook to respond at a later date. Frequent telephone contact was maintained with the U.S. Embassy in Ottawa in the ensuing days, by Mr. Lange and Mr. Cornell.

From this period onward, Deputy Secretary McNamar was regularly and thoroughly briefed on developments. He instructed the Treasury staff, as it developed its report and recommendations to the Secretary, to keep its emerging findings and recommendations confidential so that (1) there would be an opportunity to complete a fully considered report, and (2) the Secretary would have a chance to review the facts and recommendations, free of public pressure or controversy which might compromise the fairness and objectivity of the decision.

On June 9 Mr. Cornell went to New York to interview Mr. Richard Ravitch, Chairman of the MTA, and his colleagues

on the background to the purchase decision. On the following day, under instructions from Deputy Secretary McNamar, Mr. Ashby McCown, a Treasury finacial analyst, went to New York to interview the MTA's financial advisors, Morgan Guaranty Trust Company, and to attend a public hearing on the case being held by the MTA Board. The information and documentation brought back by Messrs. Cornell and McCown, along with information already received from The Budd Company, the French and Canadian Governments, and the U.S. Embassies in Ottawa and Paris formed the core of the evidence used in the Treasury analysis.

By June 14 Mr. Barber had received a copy of the transcript of the June 10 MTA hearing. On June 11, and again on June 14, Mr. Lange received confirmation by telephone from Mr. Eastham in Ottawa that the Canadian Government could not change the terms of its financing offer to the MTA without the consent of the MTA Board. During the week of June 14, the Office of the General Counsel of the Treasury also received copies of the "stipulation" entered into by The Budd Company, the MTA, and Bombardier, providing that if the U.S. Export-Import Bank offered matching financing, the contract could be reopened for bidding at the option of the MTA.

As a result of the contacts in New York with Morgan Guaranty, Mr. Ravitch, and other members of the MTA management, and on review of the testimony presented at the May 28 and June 10 hearings by the MTA, The Budd Company, labor representatives, and other witnesses, the Treasury staff by the week of June 14 had formed the general tenor and tentative conclusion of the report that would be forwarded to the Secretary. The central ideas and conclusions were developed in repeated conversations involving Mr. Cornell, Mr. Lange, Mr. McCown, and Mr. Barber.

The evidence and conclusions were discussed at length with Deputy Secretary McNamar and with Assistant Secretary for International Affairs Marc Leland, who had been periodically absent on other pressing business. (In his absence, Acting Assistant Secretary Thomas Leddy played an extensive role in deliberations with Messrs. McNamar and Cornell over the evidence, the conclusions to be drawn from it, and the nature and tone of the report to be presented to the Secretary.) By Friday, June 18, the report had gone through two drafts, and comments were being assembled for incorporation in a third.

During the week of June 21 and afterward, the Office of Trade Finance received a steadily increasing barrage of telephone calls from Congressional offices, representatives of other agencies, law firms, other interested parties, and the news media, asking when a decision might be announced. Many callers noted that the MTA's contract with Bombardier would take final effect unless Eximbank made a matching offer by July 15. All callers were informed that the Treasury staff and top officials were well aware of the July 15 deadline, that work was proceeding with all urgency, but that no indication of the staff recommendations or the Secretary's final decision could be given. During this period the final pieces of documentation were received from the MTA, The Budd Company, the French Embassy, and a Treasury Department financial representative, Allen Kone, stationed in New York. The staff report finally was forwarded to the Secretary from Assistant Secretary Leland's office on June 23.

Secretary Regan was absent from Washington during part of the week prior to July 4. In his absence, continued contacts with the Canadian Government sought to persuade them to alter the terms of their financing. An internal investigation was conducted in the Treasury to determine whether there were any possible conflicts of interest, stemming from the Secretary's prior employment with Merrill Lynch, Pierce, Fenner and Smith, which might preclude his involvement in the decision. None were found.

On June 29 a Canadian delegation, led by Minister of State (International Trade) Ed Lumley and including Ambassador Gotlieb and other high-ranking Canadian officials, met in the Treasury Department with Secretary Regan, Deputy Secretary McNamar, and the other Treasury officials principally involved in the case. This was Secretary Regan's first direct participation in matters of substance, although he had been informed periodically of the progress of the investigation. The Secretary expressed his regret that the two countries were involved in a dispute both would doubtless have preferred to avoid, and pressed the Minister to change the terms of the financing or suggest some other solution. Mr. Lumley repeated that Canada could not change the financing offer unless the MTA agreed. The meeting ended inconclusively.

In the ensuing two weeks, the Office of the General Counsel drafted a statement of finding for the Secretary's signature. The Treasury staff began intensive preparations for informing other members of the Cabinet, members of Congress, Governors, and other interested parties of the decision in advance of any public announcement. Alternate press releases were prepared, to be used depending on whether the Secretary's decision was positive or negative. Final editorial changes were made in the report and supporting documentation, in preparation for printing and public distribution.

On the morning of Monday, July 12, the Secretary called a meeting of those directly involved in the case to announce that he had decided not to authorize matching Eximbank financing. He issued instructions for printing of the report and for calling a press conference on the following day. Steps were set in motion for notifying key members of Congress, the Cabinet Council on Economic Affairs, and other interested parties. The decision was made public on Tuesday, July 13.

THE BUDD COMPANY

THOMAS I. DAVENPORT
CORPORATE COUNSEL

RESPONSES TO WRITTEN QUESTIONS

QUESTION (1) Can you explain to the Committee your reasons for asking for relief under Section 1912 of the Export-Import Bank Act Amendments of 1978?

ANSWER: The Budd Company petitioned for Export-Import Bank assistance in making financing available to the MTA because Budd believed that subsidized financing in connection with the Bombardier bid was likely to be a determining factor in the sale. The Canadian Export Development Corporation offered, if Bombardier was awarded the contract, to provide MTA with 9.7% financing of 85% of the contract price. Budd was obviously concerned that nothing it could do would overcome the prejudice created by that financing. Application of Section 1912 of the Exim Bank Act was evident because the Canadian financing violated the 11.25% floor of the inter-government standstill agreements.

QUESTION (2) Did you have any reason to believe that your obtaining financing from the Export-Import Bank under Section 1912 would have made a difference in the MTA's evaluation of your bid?

ANSWER: We believe no rational analysis of a bid with essentially prevailing rate financing (e.g. 14%) and a competitive bid with subsidized financing (e.g. 9.7%) could deny the likelihood of financing being a determining factor. We believe that no U.S. agency, federal, state, or municipal, could deny thousands of U.S. jobs and hundreds of millions of U.S. dollars of procurement if all other factors including financing were but equal. Given the opportunity, Budd would have guaranteed a package of better price, better delivery, better N.Y. state employment, and better product, besides doubling U.S. content. Exim Bank financing for MTA purchase of Budd cars would surely have made the determining difference in evaluation of Budd's bid.

QUESTION (3) How do you think your rapid transit car technology compares to that employed by Bombardier? Do you think that Treasury officials are in the position to judge between your technology and that of Bombardier?

ANSWER: Budd pioneered rapid transit car technology, not just for the U.S., but for the world. Budd invented and perfected the design of the resistance welded stainless steel structures upon which the MTA specification is based. Bombardier has neither designed nor built any stainless steel car structure of the type specified by MTA. Since Treasury officials neither invited comment from Budd nor made us aware of any technical inquiry, we cannot understand how they could make a comparative evaluation of technologies. Treasury is not, by itself, technically qualified to judge between Budd and Bombardier quality.

QUESTION (4) Do you think that, on the basis of your discussions with the MTA, technology was a determining factor in the MTA's decision to award the contract to Bombardier?

ANSWER: Budd was not advised nor did we have any reason to infer that technology could be a determining factor except to favor The Budd Company on the basis of past and expected future performances. Having built some 11,000 cars of some 273 different designs, Budd technology is eminently successful.

QUESTION (5) The Treasury Department analysis gives Bombardier the advantage over your company in New York State content. Is there a significant difference between the New York State content of your car and that of the Bombardier car?

ANSWER: There should be a proper definition of "content". On a dollar spent basis, the Budd proposal would have been within a percentage point or two of the Bombardier projection. However, Budd would offer 550 more jobs to the State of New York at a now closed railway facility in upstate Hornell.

QUESTION (6) Your company promised to deliver the first and final cars to New York City more than six months earlier than did Bombardier. Is there any reason to believe that you could not meet this delivery schedule?

ANSWER: None whatsoever. It is possible that Budd could actually better its promised delivery schedule. The Budd bid proposals are based upon conservative estimates and Budd would certainly be timely in its performance.

QUESTION (7) Why do you suppose that the Treasury questioned your ability to keep your delivery schedule?

ANSWER: Deprecation of The Budd Company appears to be an attempt to justify an unrelated policy decision. If Treasury questioned the ability of Budd to keep its proposed delivery schedule, we were not so informed. In fact, we have no knowledge of any specific questions, or, for that matter, general questions at Treasury. No questions were proposed to Budd. Treasury seemed anxious to accept after-the-fact generalization by MTA in order to obviate its consideration of Exim Bank financing. As a matter of fact, if Budd had been questioned, Budd would have pointed to the delayed delivery effect of the nine months' strike at its sole supplier of a customer specified brake system.

QUESTION (8) Do you feel that Treasury's evaluation of the price of your cars was accurate?

ANSWER: As with delivery, Treasury made no attempt to seek clarification of price or the price ambiguities introduced by MTA. Budd offered a better price than did Bombardier. In the apparent effort of MTA to pump up other factors so as to diminish the weight accordable to the subsidized Canadian financing, certain optional

alternatives were manipulated and there seem to have been one-bidder negotiations with Bombardier after negotiations were supposedly closed. By any accurate evaluation, the Budd price was lower. However, even a slight price disadvantage could not obscure the determining liklihood of the subsidized financing factor.

QUESTION (9) Were there any other inaccuracies in the Treasury Department report?

ANSWER: The most serious inaccuracy in the Treasury report is the implication that a fair, unbiased examination was made of the likely effect of the egregious financing subsidy as a determining factor.

QUESTION (10) Do you think the Treasury Department report is likely to affect your future business?

ANSWER: The attitude of MTA can be explained as self serving. MTA could deprecate Budd quality, reliability of delivery, etc. for the reason that it was afraid of losing 9.7% Canadian financing without replacement by sure-thing U.S. financing. It is to be remembered that if Treasury had recognized the improper foreign financing as likely to be a determining factor, the first official action would have been an attempt to have the foreign agency withdraw or amend its improper (low rate) financing. On the other hand, it is not so easy to explain the gratuitous insult of Treasury to a justly reputable company, its workforce, its management and its facilities. The Treasury report is itself damaging; the result, of course, is damaging also. Without some effective correction, Budd cannot compete against foreign subsidized financing. The Treasury report offers a ready excuse for other municipalities to discriminate against Budd. Budd cannot afford hundreds of thousands of dollars of bidding expenses when the odds of success are stacked against it.

QUESTION (11) What do you think the effect will be on companies who might want to seek action under Section 1912 in the future?

ANSWER: Any company in the situation of Budd, in the future, will have to measure the risk that after-the-fact, self-serving insulting criticism by the prospective purchaser will be accepted in order that application of Section 1912 may be avoided. If Section 1912 will only be invoked when the prospective purchaser admits that foreign subsidized financing is likely to be a determining factor, then Section 1912 is of little value to U.S. industry and the intent of its enactment will have been defeated. Oddly, the deeper the financial subsidy, the more likely that the prospective purchaser will find other factors seemingly very important. The Treasury Department had a clear case of foreign subsidized financing which was "likely to be a determining factor" but chose instead to contravene the Congressional intent of the Section 1912 enactment.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

QUESTION 1: Would you outline for us, and submit in detail for the Committee, your information and analysis that lead you to conclude that the Budd product was inferior to its competition?

ANSWER:

I have enclosed two copies of the July 13 Decision of the Secretary of the Treasury in this case, with appended documentation. This material describes the Treasury's findings and sets forth the analysis which led to the decision. Additional copies are available if the Committee wishes them. I have also attached a copy of Secretary Regan's letter to Mr. J. H. McNeal, of Budd, for the Committee's information.

I should emphasize two essential points to be borne in mind as the Committee reviews this material:

(1) The Treasury Department did not conclude that the Budd product was inferior to its competition. In fact, we made no judgment on the relative merits of any of the bids in this case. Section 1912 of the Export-Import Bank Act required us to determine whether "noncompetitive" financing was "likely to be a determining factor" in award of the contract. In order to do that, we had to decide what were the determining factors in the minds of the MTA Board in making its purchase decision. Consequently, all discussions in the Treasury report of such factors as price, financing, engineering, etc., are presented, insofar as possible, as they were seen through the eyes of the MTA Board. The Secretary's decision was based on an evaluation of the importance of financing factors in this context.

(2) The Chairman of the MTA Board stated that all bidders were qualified to build an acceptable car. In awarding the contract to Bombardier, the MTA appears simply to have concluded that the total Bombardier proposal met more of its requirements than the other proposals, without necessarily implying that any of the products was inferior.

QUESTION 2: In a letter to Secretary Regan, sent in protest of his decision, J. H. McNeal Jr., of the Budd Company wrote:

> Your statement and the decision indicate that of the seven factors you listed as determining, the first and second are (1) availability of the subsidized Canadian financing and (2) the cost of said financing.

> Thus, your determination that the financing is not a determining factor, when you yourself list it as TWO DETERMINING FACTORS is a travesty of the statute enacted by Congress to help American industry....

That certainly appears to be an accurate statement to me. Could you point out why that would not be an accurate evaluation of the Department's decision?

ANSWER:

I would invite the Committee's attention to relevant portions of the Secretary's letter to Mr. McNeal.

That the MTA is a government entity means that normally it is able to raise money at favorable interest rates through the issuance of tax-exempt bonds. Due to the large amount of New York City-related paper which has come to market or is expected to come to market, however, the MTA had to face the possibility that it would not be able to raise the funds needed for new subway cars through its normal channels at this time. It therefore sought other sources of funding, hopefully at no less favorable rates and terms than it could obtain were there no temporary market resistance to large MTA offerings.

This explains why the MTA advised bidders that they would need to provide financing if their bids were to be competitive. It also explains why the Treasury concluded that "the availability of adequate financing on terms at least as favorable as MTA could obtain elsewhere" -- meaning terms as favorable as a tax-exempt bond issue -- was of major importance to the MTA. Once this objective was realized, any further improvement in terms and conditions of the Canadian financing certainly was advantageous to the MTA but was not "a determining factor."

The cost of financing certainly was an important element in the MTA's calculations. But it was sufficient for their purposes that the cost be no greater than that involved in a tax-exempt bond issue, and financing within the limits prescribed by the International Arrangement on Export Credits would have met this test. The evidence indicated that Bombardier would have won the contract (on non-financial grounds) even if all financing offers had been strictly in accord with the Arrangement, and that Bombardier would have won even if Secretary Regan had authorized Eximbank to match the subsidized Canadian financing. The Canadian Government simply was out-negotiated, allowing itself to be persuaded to sweeten the financing terms more than necessary to win the

sale. Under these circumstances, we could not conclude that "noncompetitive" financing was "likely to be a determining factor," and the requirements of Section 1912 consequently were not met.

QUESTION 3: A rule is only as good as the degree to which it is enforced. The Canadians have clearly violated the international credit Arrangement, and have done it not only right under our noses, but for a sale to a governmental entity, with the direct acquiescence of our Federal Government. What kind of signal does that give to others about our regard for the sanctity of the International Arrangement?

ANSWER:

We certainly are not acquiescing in this violation of the Arrangement by Canada. The Treasury and other agencies made clear on many occasions our anger at the Canadian financing offer, and pressed them -- at meetings up to and including the Cabinet level -- to make their offer conform to the Arrangement. Further, the United States has initiated a well-publicized complaint against Canada in the GATT concerning this case.

Nor does our finding under Section 1912 imply that the United States is not enforcing the rules pertaining to export credit subsidies. Federal agencies are processing Budd's countervailing duty petition, and the International Trade Commission recently made a preliminary finding of material injury, or threat thereof, to the U.S. industry.

The signals we are sending with regard to the Canadian financing, therefore, are consistent with the signals we have been sending for the past several years. The true issue relates to Canada's regard for the sanctity of the Arrangement.

QUESTION 4: The "MTA Decision Fact Sheet," on page 4, states, "The evidence suggests that availability of adequate financing on terms at least as favorable as MTA could obtain elsewhere gave Bombardier (and Francorail) an advantage over Budd." How can that finding justify a conclusion that financing was not a determining factor in the sale?

ANSWER:

The answer to question 2 also applies here. The Treasury did not conclude that "financing was not a determining factor in the sale," as stated in the Committee's question. We did conclude that "noncompetitive" financing as defined in Section 1912 was not a determining factor.

QUESTION 5: With respect to the GATT case, it seems to be difficult for us to argue the seriousness of the situation or that the subsidized offer disadvantaged us in the face of Treasury's decision. Do you agree?

ANSWER:

The U.S. complaint to the GATT is based on the fact that the Canadian financing at sub-Arrangement rates constitutes a prima facie violation of the Subsidies Code. The Secretary's decision in the 1912 investigation supports our GATT case by detailing the precise nature and extent of the Canadian derogation from the Arrangement, and consequently of their violation of the Subsidies Code.

Otherwise, the Treasury investigation and findings are not really relevant to the GATT case, since they address the question of what factors entered into the MTA Board's purchase decision. We did not, for example, address the question either of international obligations under the Subsidies Code, or of the possible effect of the Canadian financing on U.S. industry.

QUESTION 6: How do you propose to help USTR convince a GATT panel, if the case comes to that, that we are right and the Canadians wrong?

ANSWER:

We certainly will be happy to lend USTR any support they need from Treasury. However, the question of who is "right" does not really appear to be at issue since, as noted in the answer to question 5, the Canadian offer constitutes a prima facie violation of the Subsidies Code.

QUESTION 7: In the countervailing duty case, the ITC must find the subsidy to be the cause of material injury. Do you think your decision will have an impact of their deliberations?

ANSWER:

The Treasury investigation under Section 1912 was conducted for a different purpose, and addressed different questions, than the ITC investigation.

Section 1912 required the Secretary to make certain judgments about the reasoning of the MTA Board in reaching its decision to purchase Bombardier cars. The statute focuses only on that portion of the Canadian financing which exceeds limits prescribed by international arrangements on export financing. It says nothing about injury to U.S. industry.

The ITC investigation, on the other hand, is not directly concerned with the reasons for the MTA's purchase decision, except as they relate to the question of injury to the U.S. industry. I might note that the ITC already has issued a preliminary finding that the Canadian financing poses a threat of material injury to U.S. industry.

QUESTION 8: In making its determination in this (subway car) case, how much consideration was given by Treasury to the ramifications on industrial policy generally?

ANSWER:

None. We were concerned, first, with application of the law in the manner Congress intended in passing it; second, with the effect the decision would have on our efforts to reduce or eliminate export credit subsidies; and third, with the implications of the decision for U.S. trade policy generally.

QUESTION 9: To what degree was the Treasury Decision affected by your recognition of the insufficiency of resources of the Eximbank?

ANSWER:

We had not concluded a priori that Eximbank would have insufficient resources to support an offer to Budd. We certainly recognized that such an offer, if authorized, would

draw heavily on the Bank's resources; but given that disbursements would be spread out over a period of years, plus the uncertainty as to what other demands might be made on the Bank in this or future fiscal years, we did not consider whether or not the Bank would have sufficient resources to support an offer. Had we concluded that the facts of the case warranted an offer, and had the Bank's resources then proved insufficient in the future to fund the offer while also discharging the Bank's other responsibilities, we would have been prepared to consider the advisability of requesting supplementary budget authority.

QUESTION 10: To what extent was the Treasury decision the result of an aversion to public involvement in the private sector, even though such involvement is specifically called for by statute?

ANSWER:

This was not a factor in the Treasury decision. While we, of course believe that governmental involvement in the private sector should be kept to a minimum, the provision of subsidized export credits by foreign governments already represents public involvement in the private sector to an extensive (and unacceptable) degree. The Administration believes that that kind of involvement must end. We are prepared to undertake appropriate intervention of our own where it would contribute to achievement of this goal. As we have pointed out, such intervention would not have been effective in this case.

Sincerely,

Marc E. Leland
Assistant Secretary
International Affairs

THE SECRETARY OF THE TREASURY
WASHINGTON

August 19, 1982

Dear Mr. McNeal:

I very much appreciated your letter of July 16 regarding the MTA case, since it gives me an opportunity to address what I believe to be some misunderstandings concerning the Treasury's approach to the case.

Section 1912 of the Export-Import Bank Act, as you know, empowers me to authorize Eximbank financing only when foreign "noncompetitive" financing is "likely to be a determining factor" in a sale. When first we were informed of this case, it appeared to us to be one where Section 1912 clearly was applicable. We shared your outrage over the possibility that a sale by a U.S. company might have been lost to predatory financing. We were quite ready to use Section 1912 to demonstrate our strong opposition to such practices, if the requirements of the law were met and if use of the authority would help to make a difference in the outcome.

The language of Section 1912 clearly requires the Treasury staff to conduct an inquiry which focuses entirely on the facts of the case as seen by the MTA Board. The Treasury investigation did just that. It did not reflect -- nor would it have been appropriate or relevant for it to reflect -- the Treasury's own assessments of such matters as the technical and engineering merits of the various cars, the acceptability of the proposed delivery schedules, the possibility of "overdependence" on any one supplier, or even the advantages of one financing package compared with another. Instead, our judgments focused on the relative importance of such factors in the minds of the MTA Board.

I believe that if you were to look again at the Treasury staff study and supporting documentation released at my July 13 press conference, you would find that none of the judgments therein about any of the seven major decision factors are presented as Treasury conclusions. Rather, they represent our judgments as to the MTA Board's conclusions. I sincerely regret any impression you, your

associates, or your employees may have that I or my staff intended in any way to denigrate the long record of technological achievement and quality workmanship compiled by the Budd Company and its workers. We certainly intended nothing of the kind.

I hope these general comments help to put in perspective some of the specific points you question in your letter. On the subject of engineering and quality, for example, you correctly point out that the MTA believed all three bidders were fully qualified to build the cars. This certainly is true, but it nevertheless is also true that the MTA seems to have concluded that Bombardier met more of its requirements than the other bidders.

You also point out, quite correctly, the importance of financing in the MTA's purchase decision. Yet this fact alone is not sufficient to permit me to authorize matching financing by Eximbank. The law clearly does not allow for the possibility that we will match all instances of subsidized financing from abroad. My authority is confined to those cases where (1) the terms and conditions of the financing are more favorable than permitted under international arrangements, and (2) such "noncompetitive" terms are likely to be among the determining factors. The evidence clearly showed that the availability of financing in sufficient quantity and on favorable terms was an important factor, but that Bombardier would have won the contract even if all financing were strictly in accord with international agreements. The Canadian Government offered greater concessions than necessary to win the sale. Under these circumstances, I could not find that "noncompetitive" financing was likely to be a determining factor and so could not authorize Eximbank financing.

Please be assured that we were well aware of the existence and content of the stipulation entered into by Budd, Bombardier and the MTA on June 10. But the stipulation could only take effect if we first were able to find that the requirements of Section 1912 were met. The stipulation itself did not constitute agreement by the MTA that noncompetitive financing was likely to be a determining factor in the sale -- the only condition permitting me to authorize Eximbank financing.

On the question of meetings with Budd representatives, I already have pointed out that my determination in cases such as this turns on the intention of the purchaser. We believed during our investigation that we had available to us all the essential facts from Budd's point of view, from Mr. Doane's correspondence with John Lange and from testimony presented by Budd before the Senate Finance Committee May 28 and the MTA Board June 10. Consequently, when your representatives called just prior to my July 13 press conference to ask whether we needed further information or assistance, we saw no need to meet with them personally at that time. The Treasury staff was concentrating, as it had to, on MTA's view of how its criteria were met by the three bidders and Budd never suggested to us that it would have any additional information which had influenced the MTA's decision but had not been made available to us by the MTA.

We were acutely conscious of the possibility that our statements or findings in this case might be taken to imply judgments about the merits of the countervailing duty petitions filed by you June 3 and 24. We therefore tried to avoid any suggestion that we were making such judgments. Allow me to emphasize that we considered the Section 1912 investigation an entirely separate proceeding from the countervailing duty case. In the former, the relevant consideration is the difference between the rates and terms offered by Canada and the requirements of the International Arrangement on Export Credits. The Arrangement permits a degree of subsidization of export credits and says nothing about injury. In a number of cases involving preferential export financing, on the other hand, the Department of Commerce in the past has measured the amount of the subsidy as the differential between the existing commercial rate for comparable loans and the preferred rate extended by the foreign government; also, injury must be shown. Thus the criteria which must be applied in the two cases are different. My findings under Section 1912 were the result of a different process, intended to fulfill a different purpose, than those of the countervailing duty law.

Please assure your employees that we have never had any question whatsoever about their dedication and competence. I sincerely regret any inference which may have been drawn to the contrary.

Wherever possible, we will use Section 1912 to ensure that American firms and workers are not placed at a competitive disadvantage by predatory financing practices, but in this instance Section 1912 could not be applied.

Sincerely,

Donald T. Regan

Mr. James H. McNeal, Jr.
President and Chief Executive Officer
The Budd Company
3155 West Big Beaver Road
Box 2601
Troy, Michigan 48084

Enclosure

INDUSTRY SECTOR ADVISORY COMMITTEE ON
AEROSPACE EQUIPMENT

July 22, 1982

The Honorable John Heinz
Chairman
Senate Subcommittee on International
Finance and Monetary Policy
5300 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Heinz:

The Industry Sector Advisory Committee on Aerospace Equipment (ISAC #1) is very concerned about reports of the recent decision by the Secretary of the Treasury on the New York Metropolitan Transit Authority (MTA) rail car case. Although the decision does not directly affect the Aerospace industry, the surrounding publicity signals a lack of resolve on the part of the United States Government to protect domestic industries from willfull, foreign predatory financing. Our industry faces the reality of foreign government-subsidized financing on many fronts with resultant losses in both sales and jobs.

We have not been idle witnesses to these trade distorting practices. ISAC #1 is collecting data on foreign government subsidies; we have been working closely with the Department of Commerce, Department of Treasury and the U.S. Trade Representative to promote international agreements which would eliminate export subsidies; we have encouraged both the USTR and the Senate Finance Committee to request the International Trade Commission to study practices in commuter/transport aircraft export financing. We frankly need the help of the U.S. Government. Our companies are willing and able to compete with foreign companies, but we cannot compete with foreign governments and their subsidies.

The Treasury Department's decision to deny Exim Bank support to a domestic company in the face of confirmed predatory financing was undoubtedly based on a strict, albeit narrow, interpretation of the law. This, perhaps, is how it has to be. Without additional action, however, Treasury's ruling invites a continuation of these egregious foreign government subsidy practices. Notwithstanding Treasury's conclusion that the subsidy would not have affected the sale, a precedent-setting decision has been rendered with untold implications for the transport and aerospace equipment industries and others. Moreover, the explicit disparagement of a U.S. product by its Government is, in our view, inappropriate and could prejudice any future decisions on appeals under Section 301, the GATT, or a possible countervailing duty petition.

Regardless of the ultimate outcome of this flagrant case of predatory financing, the ISAC believes the Treasury Department could have decided the case -- and publicized its findings -- in a way which would have helped discourage unfair foreign subsidy practices. Unfortunately, the action taken does nothing to discourage such practices and could have a profound effect on the persistence of damaging predatory financing from abroad. The Treasury report discounts the broader subsidy question and, in our opinion, prejudices our trade interests. We suggest, therefore, the need for a strong statement from a cabinet-level official stating that the Treasury ruling in no way indicates a lack of resolve by the U.S. to eliminate trade-distorting subsidies.

Sincerely Yours,

James D. Gormley
Chairman ISAC #1
Subcommittee on
Government Supports

cc: Members ISAC #1
Robert A. Cornell, Treasury
Sally H. Bath, Commerce
W. Stephen Piper, USTR

Note: This letter has also been sent to William E. Brock, USTR; Malcolm Baldrige, Commerce; and Donald T. Regan, Treasury, this date.

CERTAIN RAIL PASSENGER CARS AND PARTS THEREOF FROM CANADA

Determination of the Commission in Investigation No. 701-TA-182 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 701-TA-182 (Preliminary)

RAIL PASSENGER CARS FROM CANADA

Determination

Based on the record 1/ developed in investigation No 701-TA-182 (Preliminary), the Commission determines (Commissioner Stern dissenting) that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, 2/ by reason of imports of rail passenger cars, assembled or unassembled, finished or unfinished, components and parts and accessories thereof and/or to be used therewith, which are allegedly subsidized by the government of Canada.

Background

On June 24, 1982, the Budd Co., Troy, Michigan, completed the filing of a petition with the U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) alleging that imports from Canada of certain parts for subway cars to be delivered to the Metropolitan Transportation Authority of New York City will receive subsidies from the Canadian Government and that, by reason of these imports, an industry in the United States is being materially injured and threatened with material injury. Accordingly, on July 2, 1982, the Commission instituted a preliminary countervailing duty investigation (No. 701-TA-182) under section 701(a) of the Tariff Act of 1930. Notice of the institution of the investigation and conference therefor was given by posting

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1/ The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

2/ Commissioner Haggart determining only that there is a reasonable indication that an industry in the United States is threatened with material injury.

copies of the notice in the Office of the Secretary, U.S. International Trade Commission and by publishing the notice in the Federal Register on July 14, 1982 (47 F.R. 30667). A second notice amending the scope of the Commission's investigation to conform with the scope of Commerce's investigation was published in the Federal Register on July 20, 1982 (47 F.R. 31449). A public conference was held in Washington, D.C. on July 21, 1982, at which all interested parties were afforded the opportunity to present information for consideration by the Commission.

VIEWS OF CHAIRMAN ALFRED E. ECKES AND COMMISSIONERS MICHAEL J. CALHOUN, EUGENE J. FRANK, AND VERONICA A. HAGGART

In this preliminary investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury 1/ by reason of imports of components of rapid transit rail passenger cars (subway cars) which are allegedly subsidized by the Government of Canada. 2/ In a preliminary investigation, the statute requires that a reasonable indication of material injury or threat thereof be found to exist. 3/ Thus, if a petitioner in its pleadings or the Commission in its investigation raises sufficient legal issues or develops sufficient factual information to support a reasonable indication of material injury or threat thereof, then the investigation should be continued. 4/ 5/

In conducting a preliminary 45-day investigation, the Commission is not charged with undertaking an abbreviated version of a final investigation, nor must all the information developed in a final investigation be present. The Senate Committee on Finance addressed the nature of a Commission preliminary investigation:

1/ Commissioner Haggart determines only that there is a reasonable indication that an industry in the United States is threatened with material injury.

2/ Material retardation of the establishment of an industry is not at issue in this investigation.

3/ 19 U.S.C. § 1671b(a).

4/ See H.R. Rep. No. 96-317, 96th Cong., 1st Sess., 52 (1979).

5/ Commissioner Frank notes that only a low-threshold test applies to preliminary determinations. An overview on this is found in his views in Frozen French Fried Potatoes From Canada, Inv. No. 731-TA-93, USITC Pub. 1259 (1982), at 12-15.

> While the committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. The nature of the inquiry may vary from case to case depending on the nature of the information available and the complexity of the issues.

S. Rep. No. 96-249, 96th Cong., 1st Sess., 49 (1979) (emphasis added).

Domestic industry

As an initial matter, the statutory framework under which the Commission conducts countervailing duty investigations calls upon the Commission to define the domestic industry against which to assess the impact of imports. Section 771(4)(A) of the Tariff Act of 1930 defines the domestic industry as "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the domestic production of that product." 6/ "Like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ." 7/

Most of the items to be imported, with the exception of the subway car shells, cannot currently be identified. However, the financing offered by the Canadian government, which is alleged to constitute a subsidy in this case, is conditioned upon a minimum Canadian content of 60 percent of the total value of the contract. 8/ At present, the record indicates that the subway car

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6/ 19 U.S.C. § 1677(4)(A).
7/ 19 U.S.C. § 1677(10).
8/ Report at A-7.

shells 9/ will be produced in Canada and imported into the United States. 10/ In addition, certain other components, the identities of which cannot be ascertained at this time, will be imported from Canada. 11/

The Budd Company, the petitioner in this investigation, is a producer of subway car shells in the United States. 12/ In addition, there are a number of other domestic producers of components for subway cars. 13/ Thus, for purposes of this preliminary investigation, there is a reasonable basis for finding the like products to consist of shells and certain other components for use in producing subway cars, and defining the relevant domestic industry as including the domestic producers as a whole of those articles. In any final investigation, the Commission will seek to elicit further information in making its decision regarding the scope of the industry.

This preliminary investigation presents the Commission with issues of first impression. The allegedly subsidized imports involved in this investigation are components for subway cars. 14/ Bombardier, Inc., of Quebec, Canada, has been awarded a contract for 825 subway cars by the Metropolitan Transit Authority (MTA) of New York City. 15/ Bombardier, as

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9/ The shell generally consists of a floor, sides, top, ends, an underframe, and some wiring, and constitutes a significant portion of the overall value of a rail car. Report at A-3.

10/ Id. at A-7.

11/ Id. at A-7 to A-8.

12/ There are other companies with the capacity to produce shells. We note that Budd did not intend to produce shells in the United States for the MTA contract.

13/ Report, Appendix D.

14/ Subway cars, or rapid transit rail cars, are self-propelled rail passenger vehicles used in subways or elevated rail systems in urban areas or connecting urban and neighboring suburban areas. They are larger, heavier in construction, and designed to be connected in greater numbers than light rail vehicles such as trolleys and streetcars. They differ from other rail cars by being self-propelled, smaller, less heavily constructed, and designed to be connected in fewer numbers. Report at A-3.

15/ The MTA contract is the largest U.S. subway car contract ever awarded to a single contractor. Id. at A-9.

prime contractor with the MTA, will not import finished rail cars, but has represented that it will assemble the cars at Barre, Vermont, allegedly from parts and components to be obtained from both U.S. and foreign subcontractors.

The petitioner in this investigation is the Budd Co., the unsuccessful U.S. prime contractor bidding on the MTA contract, and a producer of rail car shells. The impact of the loss of the MTA contract falls initially on Budd as a prime contractor. However, there is a legal question as to whether Budd, as a prime contractor, can claim to be materially injured by reason of the imports under investigation inasmuch as Budd is not literally a producer of a product "like" those products being imported. 16/ Thus, Budd, as a prime contractor, may not constitute an "industry in the United States." 17/ 18/ 19/ The products of Budd, as a U.S. manufacturer of shells, as well as the products of other producers of components similar to those which will be

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16/ 19 U.S.C. § 1677(10).

17/ 19 U.S.C. § 1677(4)(A).

18/ Commissioner Haggart notes that the current U.S. countervailing duty law, as it traditionally has been interpreted and applied, does not appear to permit the granting of relief to a prime contractor under the facts of this case. The traditional approach to defining "like" product and "industry" for purposes of assessing injury appears to be consistent with Congressional intent. See, S. Rep. 96-249, 96th Cong., 1st Sess. 90-91 (1979); MTN Studies: Agreements Being Negotiated at the Multilateral Trade Negotiations in Geneva, Part I, section 2.1.6(1).1, USITC Inv. No. 332-101, printed in Sen. Fin. Comm. Print 96-27, 96th Cong., 1st Sess., 152-153 (1979); Report of the U.S. Tariff Commission to the Senate Committee on Finance on S. Con. Res. 38, Sen Fin. Comm., Hearing on International Antidumping Code, 90th Cong., 2d Sess. 57 (1968). If this case is returned for final consideration, the parties are encouraged to further address this concern.

19/ Chairman Eckes notes that the Senate Finance Committee in discussing the reasons for the like product provision cautioned: "The requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and the article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by imports under investigation." S. Rep. 96-249, 96th Cong., 1st Sess. 90-91 (1979).

imported, do meet the "like" product test. This raises a further question as to whether resultant injury to component producers is cognizable under the statute when a prime contractor, such as Budd, bids unsuccessfully against a foreign bidder having the benefit of an alleged subsidy from a government.

Material injury or threat of material injury by reason of allegedly subsidized imports

The components which are the subject of the Bombardier contract will be sourced both abroad and domestically with the benefit of alleged subsidization by the Canadian government in the form of financing. The petitioner has presented evidence that the alleged subsidy from the Canadian government enabled Bombardier to offer the New York City MTA more advantageous financing than Budd was able to offer in its bid. With the alleged subsidy, Bombardier was able to offer a financial package that would save the MTA $36 million in net present value. 20/ Furthermore, there is evidence on the record that financing was crucial in the MTA contract decision and an important factor explaining Budd's failure to win the contract. 21/ Richard Ravitch, Chairman of the MTA, told the Senate Finance Committee on May 28, 1982, that "the absence of sufficient financing associated with the Budd offer made its

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20/ Report at A-9 to A-10. Bombardier offered to finance 85 percent of the total contract price of $560 million at 9.7 percent over 10 1/2 years. The entire loan is being supplied by the Export Development Corporation (EDC), the Government of Canada's official export credit agency. These terms were far more favorable than those which Budd was able to offer without government assistance. In addition, the terms of the financing are in violation of the OECD's International Arrangement on Guidelines for Officially Supported Export Credits. Id. at A-15.

21/ Id. at A-9.

proposal noncompetitive." 22/ As further evidence of the critical importance of financing to awarding of the contract, Budd notes that the MTA and Bombardier entered into a stipulation before a federal judge providing for a resumption of negotiations with Budd if U.S. Export-Import Bank financing were obtained at the 9.7 percent rate offered by the Canadians. 23/ In addition, Pullman Standard Co. of Chicago, Illinois, which also has the capacity to assemble railcars, began preparations to submit a bid, but became discouraged from doing so when it learned of the financing arrangements being offered by foreign bidders. 24/

Indeed, because the financing was so important to Budd's competitive position in this contract, it actually sought financing abroad and proposed to source certain major components, including shells, offshore. This is especially significant because Budd has the capability of producing rail car shells domestically, and it presently produces them in this country to fulfill other contracts. Budd's decision to source this major component in Portugal would have resulted in diminished employment at its U.S. facilities and also a decreased utilization of those domestic facilities. At least for the purposes of this preliminary investigation, we conclude that the adverse consequences of a decision to source offshore in order to be competitive within the context of the MTA bid process is cognizable under section 771(7)(B).

22/ Testimony of Richard Ravitch, Chairman of the MTA, before the Senate Committee on Finance, May 28, 1982.

23/ Petitioner's post-conference brief at 1-2.

24/ Report at A-9. Commissioner Frank notes that other potential manufacturers of rail car shells or other components probably were discouraged from preparing bids which allegedly could not compete with Bombardier's bid proposal.

Because imports will approximate 60 percent of the value of this contract, many domestic producers of components stand to lose the potential production, profits, and employment that would come from awarding the subcontracts domestically. 25/ We find a reasonable indication that both Budd and the manufacturers of components "like" the articles to be imported are materially injured or are threatened with material injury by reason of the allegedly subsidized imports. In any final investigation, the Commission staff would have greater opportunity to ascertain the impact of these lost contracts on the domestic industry.

MTA's decision to award the 825-subway car contract to Bombardier has a serious present and ongoing impact on Budd as a prime contractor. Budd accounts for about half of the rail passenger cars assembled in the United States. In the bidding process, Budd employed designers, engineers and other personnel, expending a significant amount of money. The record shows that Budd's future production levels and revenues will be adversely affected as a result of the contract being awarded to Bombardier. At the present time, however, we do not determine whether the alleged injury to Budd as a prime contractor is of the type contemplated by the statute. 26/

25/ The issue of subsidized financing raised in the MTA contract has consequences for the future health of the domestic industry. From 1982 to 1988, it is expected that between 2,400 and 2,800 cars will be ordered by several cities across the United States. Bombardier has indicated that, because of capacity limitations, it does not intend to bid on any major contracts for subway cars while fulfilling its obligations to the MTA. The information available to the Commission in this investigation does not permit us to assess Bombardier's ability to produce subway cars for future contracts.

26/ See note 18, supra.

ADDITIONAL VIEWS OF COMMISSIONER MICHAEL J. CALHOUN

In joining the majority opinion, I fully and completely embrace the views expressed therein. I submit these additional views only to amplify matters of particular significance to me.

The prior investigation we had some two and a half years ago on imports of subway cars, investigation number 731-TA-5 and 6, was my fifth vote as a member of this body. In large part, my vote was based on a strict and literal interpretation of the statutory language. I continue to believe that the strict application of the language of the statute together with the understanding offered by the legislative history is the most effective way to assure the dispassionate and even-handed discharge of our responsibilities under the laws we administer. What, perhaps, has changed with the experience of the past two years is my greatly expanded appreciation of the broad range of domestic industries and the extent to which domestic industries can have differing functional characteristics and structural features.

If the trade laws we administer were drafted, as I believe they were, in light of the full array of commercial activity that exists in this country, then the application of law to fact must be undertaken not only within the strictures of the plain language but also in view of the diverse characteristics and features of the many and differing domestic industries that exist. It is from this perspective that I have approached my analysis in this investigation.

In the first place, as I have observed before 1/ and as alluded to in the majority views, the standard for preliminary determinations is by the plain terms of the language, lower than that for a final. But simply to say the standard is lower conveys little understanding of how the standards differ from that of the final. The language "reasonable indication of material injury...." to me connotes acceptance of a measure of uncertainty of conclusion and an insufficiency of information. While what is reasonable is hard to quantify in the abstract and certainly will vary from case to case, the understanding I have is that information in a preliminary investigation must demonstrate the allegation by petitioner is more than frivolous, but something less than a conclusive showing. The legal theories offered must be arguably cognizable under the law, but need not in every preliminary investigation be able to survive close and detailed scrutiny. As well, the factual information and the legal arguments raised must offer a measurable potential for an affirmative final determination.

Thus, although much of the information relied upon in the majority opinion may be less than that we have traditionally relied upon in preliminary cases and the legal theories, perhaps, somewhat more tenuous, it seems to me that they well meet these minimal standards for reaching a sound preliminary affirmative. This is so largely because much of the structure and operation of the production of subway cars, as presented here, are new to our experience under the Trade Act of 1979, and present some significant legal issues of first impression. This novelty thereby certainly compels a greater tolerance, at the preliminary stage, in applying law to fact.

1/ See Supplemental Views of the Commission, Rail Passenger Cars and Parts Thereof, Inv. No. 731-Ta-5 and 6, Additional Views of Vice Chairman Michael J. Calhoun and Commissioner Paula Stern, at p. 17.

In this connection, since January 1980 the Commission has typically considered investigations in which the focal points of our analysis were an imported article and the domestic producers of a competing like product. These previous investigations easily fit within the literal statutory language, which refers to products and merchandise as opposed to intangibles. We have never been called upon, to consider, for example, issues such as the applicability of the statute to imports of services; whether the protection from unfair competition provided by the law is available to suppliers to the companies seemingly most directly affected by the imported merchandise; and the scope of the "other factors" under section 771(7)(B) of the Trade Act of 1979. 2/ to consider in analyzing the impact of imports.

But this investigation presents, inter alia, exactly these novel and mixed questions of law and fact as well as others. Indeed, as an initial matter, we have before us the mixed question of what exactly is being imported. Is it only components? In view of the structure and operation of the industry and considering that the imported components are exclusively dedicated not only to use in subway cars, but also to use in the cars under the MTA, are the component imports tantamount to imports of completed cars? Or could the imported article be the technological expertise of Bombardier? These factual questions, if they are to be considered, must be addressed along with the underlying legal question of whether the imports referred to under section 703 as "merchandise" include service functions. In this regard, although it seems rather clear that for the statute to be applicable there must be imports of merchandise and not services, can the domestic industry be those who produce a like product by performing more of a service than actual manufacturing?

2/ 19 U.S.C. 1677(7)(B).

As a further example of the novelty of this case and the mixed questions of law and fact it presents, there have been and are produced in the United States car shells and every other component of subway cars which might be imported. However, according to the proposal submitted by Budd as the prime contractor, its shells for the MTA contract were to be produced offshore and the production of the other parts was to be subcontracted. This factual situation raises a legal question as to the significance of a decision by a domestic producer to source offshore and whether harm under the statute has been suffered by those who made that decision.

Another example exists with regard to the question of causality and the measure of requisite harm. Can the impact of the planned imports from Canada be illustrated by the experience of Budd and Pullman-Standard as prime contractors? 3/ Pullman Standard, which ceased bidding on rail passenger cars in 1979 decided to try to reenter the market by bidding on the MTA contract. Engineers and designers were hired and an initial proposal was submitted. 4/ However, after conversations with MTA, during which Pullman-Standard was made aware that offshore financing was required, 5/

3/ Any prime contractor bidding on a MTA contract puts together a package for production of rail cars, when necessary arranges for financing and takes the risks of loss, late deliveries from suppliers, quality control, etc.

4/ There is no information on the record to indicate what, if any, U.S. production would have been undertaken by Pullman-Standard. It is generally known that in the 1970's they often produced shells themselves at their facility. It is reasonable to assume they would have done likewise for the MTA contract.

5/ Additionally, it was generally known that no U.S. private or public financing was available to meet the terms offered by other countries. The truth of this belief was underlined by the denial of Budd's request for competitive financing by the Export-Import Bank of the United States.

the company decided to proceed no further. It, subsequently, released the designers and engineers and sold its assets. It is reasonable to infer that the withdrawal from bidding on the MTA contract in view of the subsidized competition resulted, in part, in the U.S. industry's failure to hire employees and use its production facilities. But how does this square with our recent decision in Commuter Aircraft, 701-TA-174/175, in which we found the domestic industry had not taken sufficient steps to compete? Does this circumstance reveal a reasonable indication of nexus between the subsidized imports and this domestic "producer"?

In light of these and other considerations, it strikes me that there are at least four serious legal issues of first impression which arise from the facts on the record and from the nature of prime contracting:

1. Are the adverse consequences of a sound business decision by a prime contractor to source offshore in order to compete with a subsidized foreign prime contractor one of the "other factors" under section 771(7)(B) which the Commission may consider in analyzing whether material injury or threat exists with regard to a domestic industry?

2. Under what circumstances, if any, can prime contracting be considered a domestic industry, as defined in section 771(4)(A) of the Act?

3. Are the consequences referred to in 1 above and their impact on domestic suppliers of component parts cognizable under Title VII of the Act?

4. Is the failure of a domestic prime contractor one of the "other factors," under section 771(7)(B), which the Commission may consider

in analyzing whether material injury or threat exists with regard to domestic suppliers of component parts?

It may be argued that what I characterize as novel issues may well not be before us. They certainly were not argued by petitioner in this investigation, perhaps for good reason in view of our earlier determination or perhaps for other reasons. But, it is my view that the Commission has an obligation to consider not only traditional, but also innovative methods of analysis particularly when a putative industry does not easily fall within our usual analytical methodology. I consider it to be primarily the obligation of a petitioner to present, in support of the position, rational legal argument and facts sufficient to support a reasonable indication of the requisite harm and causation. When, as in this investigation, the petitioner meets this burden with regard to some but not all of the possible arguments, I think the Commission, sua sponte, can and, indeed ought to make the more complete analysis if the facts presented allow.

In sum, for the reasons expressed here and in the majority opinion, the legal issues presented by this case are of such significance and are sufficiently supported by reason and by fact as to render, in my mind, a denial of an opportunity for closer scrutiny of this matter not only harsh, but poor policy in the application of section 703.

VIEWS OF COMMISSIONER PAULA STERN

Summary

This investigation concerns allegedly subsidized articles imported from Canada which will be used for manufacturing in this country 825 subway cars for the Metropolitan Transit Authority of New York (MTA) pursuant to a contract awarded to a Canadian manufacturer, Bombardier, Inc. No finished cars will be imported. Bombardier, Inc., will manufacture the finished cars in a Barre, Vermont facility. None of the Canadian parts which will eventually be used in the domestic production of subway cars will be imported until some time in the future.

A few unusual but major issues were involved in this investigation, all resulting from the principal roles played in this case by the winning bid and the unsuccessful bid. The Commission had to determine whether the parts which the Canadian prime contractor, Bombardier, Inc., presently intends to import will injure domestic producers of those articles. All of the major components of the Bombardier subway cars, except one, the shell, will be sourced in the United States. If the petitioner, the Budd Company (Budd), had been awarded the MTA contract, it would not have manufactured the shell in the United States either. Additionally, the Commission encountered in the countervailing duty investigation the distinction between trade in goods and trade in services. Moreover, the Commission had to consider the likelihood that Bombardier could change its plans to source certain components in the United States and might, instead, import them from Canada. Finally, the Commission confronted the issue of whether it was foreseeable that the Budd Company would lose other rail transit procurements to Bombardier on the basis of

Bombardier's ability to employ subsidized imported parts. In considering this possibility, an evaluation was required of the probability that the Budd Company might produce in the United States the shells for any such contract bid.

The Commission determined on August 3, 1982, by a vote of four to one that there was a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the imports of the allegedly subsidized merchandise subject to this investigation. In casting the dissenting vote in this preliminary case, I carefully considered the statutory provisions for determining the scope of the domestic industry and for analyzing any material injury which the award of the MTA contract may have caused or threatened to cause to a domestic industry. Underlying my negative determination was the statutory purpose of preliminary investigations.

There are three analytical phases in making a preliminary determination. First, the scope of the domestic industry must be established within the framework of statutory guidelines. Second, the Commission must determine whether the domestic industry is materially injured or threatened with material injury. Third, the Commission must determine whether the material injury or threat of material injury is caused by the allegedly subsidized imports. I will consider each of these in turn.

Statutory guidelines

Subsection 771(4)(A) of the Tariff Act provides--

> In general. The term 'industry' means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. [Emphasis added.]

Discretionary departures from this general rule are permitted in circumstances which conform to other subsections of section 771(4). The statute allows the exclusion of domestic producers from the domestic industry where the producers are "related" to exporters or importers of the subsidized product under investigation or are themselves importers of the subsidized product. 1/ The statute also permits a determination of material injury based upon material injury to regional industries in situations where there is no material injury to the domestic producers as a whole. 2/ Finally, the statute provides for situations in which data on the "like product" cannot be separated from the broader industry's production or profit information. In such cases, the Commission may frame the industry in terms of the narrowest possible group or range of products which include the like product. 3/

The key concept in the selection of the domestic producers which comprise the appropriate domestic industry in a given investigation is the "like product." The Act defines the term "like product" in the following manner.

> The term 'like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title. 4/

In order to determine whether a domestic industry is materially injured, therefore, the statute directs the Commission to identify the imported products. Once the imported products are identified, the Commission's investigation focuses on identifying the domestic producers of those products. The domestic manufacturing facilities of those producers which are employed in

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1/ Subsection 771(4)(B).
2/ Subsection 771(4)(C).
3/ Subsection 771(4)(D).
4/ Section 771(10).

the production of the like product constitute the domestic industry against which the impact of the imports subject to investigation is measured, data permitting.

This scheme for the development of a domestic industry on a case-by-case basis in both antidumping and countervailing duty investigations is modeled after similar provisions of the 1979 version of the so-called International Antidumping Code 5/ and the 1979 international agreement on subsidies and countervailing measures. 6/ The latter agreement specifically provides that--

> [i]n determining injury, the "domestic industry shall . . . be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products . . .. [References to related producers and regional industries omitted.] 7/

The agreement further provides that--

> [t]hroughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration. 8/

Although the wording of the United States law is not identical to that of the international agreement, it was legislated with the knowledge that it would further restrict the discretion of the Commission in administering the

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5/ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, done Apr. 9, 1979, MTN/NTM/W/232, reprinted in, Agreements Reached in the Tokyo Round of the Multilateral Trade Negotiations, H.R. Doc. No. 153, 96th Cong., 1st Sess. (1979).

6/ Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, done Apr. 12, 1979, MTN/NTM/W/236, reprinted in H.R. Doc. No. 153, 96th Cong., 1st Sess. (1979).

7/ Id., at Article 6, paragraph 5.

8/ Id., at Article 6, paragraph 1, note 2.

antidumping and countervailing legislation which it had exercised prior to the passage of the Trade Agreements Act of 1979. In a 1979 report to the Senate Finance Committee on the agreement, the Commission stated that--

> [i]n its administration of the injury provisions in both the Antidumping Act, 1921, and the duty-free provision of the countervailing duty statute, the U.S. International Trade Commission has not considered a domestic industry to be limited to the producers of a "like product" 9/

Although the United States did not implement the code standard of "identical" as the definition of like, it did adopt the standard of "characteristics and uses." In the words of the Senate Finance Committee Report--

> Reason for the provision.--The definition of "like product" in the bill has the effect of delimiting the U.S. industry to be examined by the ITC in making its determinations of whether an industry in the United States is experiencing the requisite degree of injury. The ITC will examine an industry producing the product like the imported article being investigated, but if such industry does not exist and the question of the material retardation of establishment of such an industry is not an issue before the ITC, then the ITC will examine an industry producing a product most similar in characteristics and uses with the imported article. The requirement that a product be "like" the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not "like" each other, nor should the definition of "like product" be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation. 10/

Therefore, the expansion beyond "identical" in section 771(10) of the Act must be said to go only to minor variations in characteristics and uses. For example, the law does not authorize the Commission to equate the production of

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9/ Subcomm. on International Trade of the Senate Comm. on Finance, 96th Cong., 1st Sess., 6 MTN Studies, Pt. 1: Agreements Being Negotiated At The Multilateral Trade Negotiations in Geneva--U.S. International Trade Commission Investigation No. 332-101, at 152 (Comm. Print 1979).

10/ S. Rept. No. 96-249, 96th Cong., 1st Sess., at 90-91.

a finished rail car with the production of a component part. It is apparent also that the Commission cannot equate the award of a prime contract with the production of a component part.

The function of the like product provision in the countervailing duty law is to identify as specifically as possible the domestic producers of products comparable to the imports in terms of their characteristics and their uses. This approach has two consequences. Although it can increase the likelihood of an affirmative material injury determination, it does so by requiring domestic producers to limit their petitions for countervailing duty relief to only those imports for which a statistical impact on domestic production and consumption can be shown. To the degree that domestic producers are successful in obtaining countervailing duty relief, the duties are imposed on very narrowly described categories of products.

Facts of this case.

The allegedly subsidized imports in this investigation involve components for subway cars to be imported from Canada. Bombardier, Inc., of Quebec, Canada, the only Canadian producer of rail passenger cars, has been awarded a contract to produce 825 rail passenger cars for the Metropolitan Transit Authority of New York. The company will assemble the rail passenger cars at its plant in the United States, at Barre, Vermont. Accordingly, no finished rail cars will be imported for the MTA contract. There are two types of parts, components, or accessories which may be used in the assembly of a rail passenger car. The first are those made to transit authority specifications and are produced on order. The other type, which will be discussed below, consists of fungible products [illegible]

There is no continuing market for rail passenger components independent of the transit authority orders. Production takes place when an order is received. A potential subcontractor will not produce products dedicated to the transit authority specification and maintain an inventory of the products in anticipation of being awarded a subcontract. Until a specific order is received, a producer's facilities will be used producing other products unrelated to rail passenger cars. In the absence of an order for specific components, there are no domestic producers of the like product. Even though the sources of Bombardier's components will become known in the coming years as it completes negotiations on the subcontracts, the identities of the suppliers who might have received subcontracts from Budd can never be known.

Although a rail passenger car consists of approximately 5,000 components, six of these components account for a very significant amount of the total cost of manufacturing a rail passenger car. 11/ The following are the six components: 1) the shell; 2) the truck assembly (including sideframes, bolsters, wheels and axles); 3) the coupler assembly (including coupler, electrical head, yoke and draft gear); 4) the propulsion system; 5) the brakes; and, 6) the air-conditioning system. Of these six component systems, Bombardier will source all but the shell in the United States. The shell will be imported from Canada. With regard to the other five major component systems, no domestic industries within the meaning of section 771(4) of the Act can be subjected to material injury from allegedly subsidized imports from Canada because there will be no imports under the MTA contract.

11/ These components will account for well over half of the material and component cost of filling the MTA contract. With the possible exception of the door operators and controls, no other components will account for more than about 1 percent of the total value of the contract. Report at A-3.

The domestic producers of shells which competed with Bombardier for the MTA contract were the petitioner, the Budd Company, and the Pullman-Standard Company. 12/ Pullman-Standard announced in March, 1979, that it would no longer bid on rail passenger car contracts. 13/ In 1981, the firm was contacted by the Commission staff during the course of a supplementary antidumping proceeding. 14/ A company official attributed the firm's withdrawal from the market to difficulties in negotiations with transit authorities, not to foreign competition. 15/ Subsequently, the firm was acquired by the Wheelabrator-Frye Company, Hampton, N.H. The firm attempted to re-enter the rail passenger market in October, 1981, by negotiating with MTA for the production and delivery of 325 cars, with options for an additional 825. The company abandoned the negotiations in December, 1981, and Nissho Iwai Corporation was awarded a contract for 325 cars in March, 1982. It was the opinion of both the former contract manager and the President of Pullman-Standard that the negotiations were abandoned because the company did not have access to any foreign financing and because the contract terms and

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12/ Boeing-Vertol Company, a division of Boeing Co., and General Electric Co., Erie Pa., assemble rail passenger cars under subcontract with other firms. They do not manufacture shells or compete for transit authority procurements as prime contractors. Report, at A-6, note 1. The withdrawal of the Budd Company's domestic competition from prime contracting predated the arrival of significant competition from foreign railcar assemblers. Rail Passenger Cars and Parts Thereof Intended for Use as Original Equipment in the United States from Italy and Japan, Investigation Nos. 731-TA-5 and 6 (Preliminary), USITC Pub. 1034 (February 1980), at 6, finding 8.

13/ Supplemental Views of the Commission with Respect to the Importation of Components and Parts of Rail Passenger Cars, March 23, 1981, at 8.

14/ The Budd Co. Ry. Division v. United States, et al., 507 F. Supp. 997 (1980). The case was dismissed in 1981 in response to a motion filed jointly on behalf of the Budd Company and the Government.

15/ See, supra, note 13, at 8.

technical specifications were onerous. 16/ The decision was not related to imports from Canada within the meaning of section 703 of the Act.

The Budd Company negotiated for the initial contract for 325 cars and the subsequent contract awarded to Bombardier. Budd, unlike Pullman-Standard, would not have produced the shell in the United States. The company does, however, produce shells domestically for other contracts at its Red Lion, Pennsylvania, plant.

Budd would have sourced the shell for the MTA contract in Portugal. The company's reasons for the decision to source the shell in Portugal included: the availability of government-supported export financing in the form of buyer's credits; 17/ the lack of capacity to manufacture additional shells at its Red Lion plant; 18/ and the cost savings from the offshore sourcing. 19/ Having decided to produce the shells in Portugal and finish the cars in a yet-to-be refurbished U.S. facility at Hornell, New York, unrebutted testimony indicates that the company planned to use the second facility for leverage in negotiations with the United Automobile and Aerospace Workers (UAW), the union which represents about 1300 production workers and about 300 white collar workers at the Red Lion plant. 20/ There is nothing on the record to support an inference that the Budd Company would have reconsidered the decision to source the shell in the United States had it been able to secure domestic financing equivalent to that received by Bombardier or, for that matter, had

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16/ July, 1982, telephone conversations with Commission staff.
17/ Report, at A-10.
18/ Post Conference Brief of MTA, at Exhibit B; Conference transcript, at 106-107, 128.
19/ Id., at 128.
20/ Id., at 132. The plant at Hornell, New York, would not have been represented by the UAW.

it been awarded the contract by MTA. Rather, another inference is obvious. The company would have sourced the shell in Portugal because it was more profitable than manufacturing it in the United States. 21/ Thus, there is no foundation for treating the Budd Company as a "domestic" producer of shells in analyzing its negotiations with the MTA. Had the Budd bid been successful, its domestic shell manufacturing capability would not have been utilized.

The Budd Company will be affected by the loss of the MTA contract; however, this injury will affect its role as a prime contractor, not its role as a producer of shells. The award of 825 cars is the largest single order in history. The company claims that it may have to lay-off 30 to 40 persons on its engineering staff if it does not win a new contract for the initial work involved in an order. 22/ The very nature of a prime contractor is to provide design, engineering, technological, testing, and warranty services. These are services which are not protected by section 771(4) of the Act. 23/ The countervailing duty laws cover such services only to the extent that they are inseparably connected to the importation of a product like the imported article subject to investigation.

21/ In the investigation of Certain Iron-Metal Castings from India, Investigation No. 303-TA-13 (Final), domestic producers of the like products were also responsible for nearly one-third of the imports subject to investigation. In that case, however, the producers imported in order to remain competitive with other importers to maintain their ability to supply the market from their domestic facilities. See, Statement of Reasons of Commissioner Paula Stern, USITC Pub. 1098 (September 1980), at 19-20.

22/ Transcript, at 12-13.

23/ International trade in services is only now coming to the forefront of international trade policy. The topic of international standards of conduct for trade in services has been proposed for the agenda for the November, 1982, ministerial meeting in Geneva under the auspices of the General Agreement on Tariffs and Trade. The present investigation might well provide a useful case study for such discussions.

In concluding my considerations of the definition and condition of the domestic industry, I wish to emphasize that my findings have not turned on obscure technicalities in the law. The differences between various components and those between shells and completed cars are not the "minor differences" about which the Senate Report cautions. The distinctions between domestic and foreign production on the one hand, and goods and services on the other, are equally crucial.

Causation.

Assuming that a reasonable indication could be demonstrated that Budd is somehow materially injured, or threatened with material injury, within the meaning of the United States countervailing duty law, the Commission must determine if there is material injury "by reason of" the allegedly subsidized imports from Canada.

Both the legislative history 24/ and case law 25/ support the position that the language "by reason of" is a contributing cause standard. The Commission is not to weigh the various causes of material injury. However, it is necessary to examine other causes of material injury to determine whether subsidized imports are causally related to any injury. If all of the material injury is caused by factors other than subsidized imports, the Commission must make a negative determination. 26/ I have demonstrated that there is no material injury to a domestic industry producing a like product in this

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24/ Compare, S. Rept. No. 96-249, at 57-58.
25/ See, Pasco Terminals, Inc. v. United States, 477 F. Supp. 201 (1979), aff'd, 634 F.2d 610 (1980) ("by reason of" in the Antidumping Act, 1921).
26/ See, e.g. Certain Commuter Airplanes from France and Italy, Investigation No. 701-TA-174, USITC Pub. 1269, July 1982.

investigation, I will now address factors other than the allegedly subsidized financing of imports which caused the loss of the MTA contract to Budd.

There is unrebutted testimony on the record indicating that Bombardier's delivery record is nearly perfect, but that Budd's delivery problems with MTA (on previous contracts) could become the subject of litigation. 27/ Budd's delivery problems have been reflected in its revenues. 28/ Against a background of delayed deliveries, with a backlog of over 1,000 cars, 29/ and an annual average production of only approximately 60 cars a year over the last five years, 30/ Budd's contract proposals included an unproven "start-up" plant in Hornell, New York. Moreover, its request in its bid for a waiver of liquidated damages for delays in delivery would not have enhanced its reputation for dependability. 31/ The record also discloses that Bombardier is licensed to take advantage of the Nissho Iwai know-how which influenced MTA's award of the first 325 cars. 32/ MTA's evaluation of the Nissho Iwai/Kawasaki work in progress has been favorable. 33/ At the same time MTA is of the view that some Budd models purchased under other contracts "have still not performed in a satisfactory manner." 34/

I do not intend to imply that the MTA requirements for vendor financing did not influence its selection of Bombardier or, for that matter, the nature

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27/ Transcript, at 168, 133, respectively.
28/ Report, A-17.
29/ Post Conference Brief of MTA, at 16.
30/ Id.
31/ Transcript, at 131.
32/ Id.
33/ See MTA Memorandum Re: MTA - Bombardier Subway Contract Award, reprinted in U.S. Department of the Treasury, Financing of Subway Cars for the Metropolitan Transportation Authority of New York, July 13, 1982.
34/ Transcript, at 134.

of the negotiations between MTA and the contestants. Nor do I wish to imply that the current interest rates in the United States would not influence a decision to seek government export credits abroad. The important point is that the record indicates that, even if Budd had obtained equivalent financing, it would not have been awarded the contract. 35/

Threat of material injury

The analysis of material injury has focused on the results of the MTA contract. During the course of this investigation, there has been speculation on a number of issues, including the possibility that Bombardier might change its sourcing of the major components and the potential impact that the MTA contract might have on other domestic component manufacturers.

The discussion of the six major components of a rail passenger car rests on the assumption that Bombardier will not change its present plans for sourcing these components for the MTA contract. Bombardier will not receive a formal notice to proceed under the MTA contract until the Canadian government formally approves the financing arrangements. This approval is expected this month. Once the notice to proceed is issued, full scale production of cars for the MTA contract is not scheduled to begin for approximately 28 months. 36/ Could Bombardier change its sourcing plans for the other five major components? It is doubtful. The timing of such a decision would be inopportune for the firm. Bombardier will not enter into final negotiations

35/ See, transcript, at 184. Budd's presence in the negotiating process was instrumental to MTA in fostering a credit competition among the Bombardier, Francorail, and Budd. It is apparent that the presence of the Budd Company in the negotiations was a significant factor in MTA's price negotiations with Bombardier.

36/ Report, at A-7.

with prospective subcontractors until it receives the formal notice to proceed. It will then take months to negotiate the subcontracts. Bombardier's flexibility to adjust sourcing will decline dramatically as time proceeds. Announcing the sourcing of these components in the United States and subsequently shifting the sourcing of these components to Canada would invite new countervailing duty investigations at a time when the company will have far less flexibility to change its sourcing.

What about the balance of the other 5,000-odd components? As the Commission majority may discover during a final investigation, there is no way for the Commission to find out. Many of these products will never be imported. Of those which are, many are not dedicated principally for use in the assembly and finishing of rail passenger cars. For example, consider items such as pipe, valves, wire, insulation, floor covering, and metal fasteners. 37/ None of the producers of these products is dependent upon an anticipated rail passenger car subcontract to schedule its production. In the absence of information indicating which companies would have secured a subcontract with Budd for each article which was imported, it is not possible to define an affected domestic industry. On the other hand, there can be no material injury to an identifiable domestic industry capable of producing those imported, non-fungible items produced to the specifications of the MTA contract because these producers only manufacture when an order is received.

Three domestic firms joined together as the Committee of American Subway Car Suppliers in support of the Budd Company's petition. All three firms allege that since they have been suppliers to Budd of subway car components of

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37/ See, transcript, at 109.

the kind involved in this investigation, they will be injured by imports of parts from Canada for the MTA contract. Standard Steel is a producer of wheels and axles. Bombardier will source these in the United States. Assuming that Standard Steel does not secure the subcontract, the domestic industries producing steel wheels and axles cannot be materially injured within the meaning of the countervailing duty law by the award of the contract to another U.S. firm. Coach and Car produces seats for rail passenger cars. There is no way to tell whether the company would have been awarded a subcontract had the Budd Company won the MTA contract. Finally, Allegheny Ludlum produces stainless steel sheet used in fabricating shells for rail passenger cars. This stainless steel sheet does not appear to be a part, component, or assessory to a rail passenger car within the scope of the Commerce Department notice issued pursuant to section 702 of the Act (47 F.R. 31415, July 20, 1982).

What about the impact of allegedly subsidized Canadian imports in other transit authority contracts? If we assume that the Budd Company works off enough of its present backlog to use its Red Lion plant or decides to forego the cost savings of sourcing its shells in Portugal and opens another domestic facility, Budd, as a domestic producer, could meet Bombardier in head-to-head competition for another prime contract. The record indicates that this is highly unlikely. Bombardier will not compete for steel-wheeled subway car contracts or commuter car contracts other than small orders it might be able to "tack-on" to orders of identical cars on an existing production run. 38/ Unrebutted testimony indicated that such "tack-on" orders are very difficult

38/ Post Conference Brief, at 6.

to find. 39/ In addition, Bombardier has concentrated its marketing in so-called light-rail-vehicles which Budd does not currently produce. 40/ Bombardier, moreover, will have a backlog of its own until 1987 and will not increase its capacity in the foreseeable future. 41/ Those upcoming major orders on which Budd may bid will not be bid on by Bombardier. These include the MTA order for 226 cars, the Atlanta order, the Houston order, and the San Francisco order. 42/ There is no real threat of imminent injury by reason of allegedly subsidized Canadian imports. There is only speculation and conjecture, unsupported by any information on the record.

The role of a preliminary investigation

The potential consequences of the majority vote in this investigation become clear when it is set in contrast to the Congressional intent in directing preliminary investigations. During the Kennedy Round of trade negotiations, the British and Canadian governments accused the United States of having created antidumping investigative procedures which constituted a non-tariff barrier. At that time, the United States antidumping law provided for the Treasury Department to conduct and complete its pricing investigation prior to the Commission's beginning an injury investigation. The proceedings took months, during which importers had no idea whether they would ultimately owe any antidumping duties. As the provisions of the 1967 version of the International Antidumping Code were negotiated, the concepts of simultaneous

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39/ Transcript, at 187.
40/ Transcript, at 83. A close reading of the "confidential" letter received on July 30, 1982, from the Budd Company does not change this assessment.
41/ Post Conference Brief, at 6.
42/ Id.

investigations concerning pricing and injury within a reasonable period of time were formulated. 43/ The bifurcated jurisdiction between the Treasury Department and the Commission prevented simultaneous proceedings in the absence of amending legislation. Treasury, however, proceeded to implement the international code by requiring the Commissioner of Customs to conduct a summary investigation to determine whether investigations should be discontinued at a preliminary stage. 44/ Customs regulations were also amended to require that information concerning the importation of merchandise within the purview of the antidumping law be submitted on behalf of an industry in the United States and that the communication include information indicating that an industry in the United States is injured, or is likely to be injured. 45/

The promulgation of the Treasury regulations was without any real authority inasmuch as Congress had enacted a bifurcated procedure in which the determination of injury was delegated to the Commission. The amendment of the Antidumping Act, 1921, by the Trade Act of 1974 provided for a preliminary injury determination to be conducted by the Commission. 46/ The Senate Finance Committee Report on the bill which became the Trade Act stated that "this amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade." 47/

43/ See, Gerald and Victoria Curzon, "The Management of Trade Relations in the GATT," in Andrew Shonfield, International Economic Relations of the Western World, 1959-1971, Vol. I., at 247-248 (1976).

44/ 19 CFR 153.29 (1973).

45/ 19 CFR 153.27(e) (1973).

46/ Section 321 of the Trade Act of 1974, amending the Antidumping Act, 1921. The Antidumping Act, 1921, was repealed by the Trade Agreements Act and replaced by the antidumping provisions of Title VII of the Tariff Act.

47/ S. Rept. No. 93-1298, 93d Cong., 2d Sess., 171 (1974).

The enactment of Title VII of the Tariff Act in 1979 extended the preliminary investigation to the countervailing duty determinations in section 703. The Finance Committee stated:

> A major objective of this revision of the countervailing duty law is to reduce the length of an investigation. Long investigations serve no purpose 48/

The Finance Committee also stated that the "reasonable indication" standard was to be applied in essentially the same manner as the "reasonable indication" standard in the 1974 amendment to the Antidumping Act, 1921.

The analysis of a claim for countervailing duty relief within the statutory guidelines for determining the appropriate scope of the domestic industry and assessing material injury in terms of economic, rather than any other, considerations is necessary to prevent two undesirable results: an inordinate and unnecessary expenditure of government resources, and unnecessary barriers to import trade stemming from uncertainty about potential liability for duties and from the expense of mounting defenses in two administrative proceedings.

The Commission may not rely on a "lower threshold" of injury for a preliminary determination as compared with the final determination. The Commission continues a case when the preliminary investigation shows a reasonable indication of material injury even though the data are inadequate to evaluate certain economic criteria. Examples of missing data that might prompt an affirmative preliminary determination include a lack of comparable transaction prices in a case where average prices or list prices do not reflect the actual competition and the inability of the Commission to gather

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48/ S. Rept. No. 96-249, at 49.

an adequate sample of domestic producers to provide profit and loss allocations on a like product within the 45 days. 49/

Neither type of case is present here. There are no market prices of "shells." Rather, there is an average price per finished car, of which there are no imports. Similarly, we do not need time to allow the domestic producer to improve a profit and loss allocation to a product which would have been made in Portugal. What then does the majority expect to see if the case returns for a final investigation in mid-September or, perhaps, late November? Bombardier will not have completed its subcontracts by that time. Budd will not be able to provide further information on subcontracts it will never negotiate. In short, the record of the present investigation is unusually complete. There is little else the Commission can expect to emerge in a final investigation.

Although the statutory standard for a determination in a preliminary investigation is different from that in a final investigation, the statutory guidelines for selecting the domestic producers which make up the domestic industry and the guidelines for assessing material injury are identical in preliminary and final investigations. Moreover, the statute requires that an affirmative determination be supported by a finding that material injury is "by reason of" the imports under investigation in both preliminary and final investigations. The difference between the preliminary and the final investigations is the factual information necessary to support an affirmative determination. In the preliminary investigation, the information available to the Commission need only indicate a reasonable indication of material injury

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49/ See, e.g., Countertop Microwave Ovens from Japan, Investigation No. 731-TA-4 (Preliminary), USITC Pub. No. 1033 (February 1980).

by reason of the imports subject to investigation. In a final investigation, an affirmative determination must be supported by substantial evidence on the record. 50/ Thus any determination in a final investigation of this case will essentially involve re-evaluating information which is already before the Commission in the record of this preliminary investigation.

Burden of proof

The Senate Finance Committee has stated: "The burden of proof under section 703(a) would be on the petitioner." 51/ The Commission has no "burden of proof" in the sense of a formal adjudication. The 45-day time limit does create a burden of coming forward with the information available to the petitioner which supports its claims of material injury. 52/ The statutory scheme clearly contemplates that the Commission evaluate petitioner's claims against the economic factors in section 771(7) of the Act. The Finance Committee Report supports this construction of the statutory scheme:

> While the committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. 53/

The House report is no less exacting:

> It is therefore intended that the ITC will investigate the allegations in the petition in as thorough a manner as possible using the information available within that time period, and will provide interested parties a reasonable opportunity to present their views. 54/

50/ Compare, Additional Views of Commissioner Paula Stern, Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Investigation Nos. 701-TA-148 through 150 (Preliminary), USITC Pub. 1230 (March 1982), at 32.

51/ S. Rept. No. 96-249 at 49.

52/ See, Additional Views of Vice Chairman Michael J. Calhoun and Commissioner Paula Stern, in Supplemental Views, supra, note 13, at 19-20.

53/ S. Rept. No. 96-249, at 66.

54/ H. Rept. No. 96-317, 96th Cong., 1st Sess. 61 (1979).

The Budd Company's burden of coming forward in this case was established to the satisfaction of the majority on the basis of a novel theory of an entitlement to contract awards. The 1980 proceeding was based upon the award of transit authority contracts which called for deliveries in 2-3 years. 55/ The best argument the Budd Company put forward for relief in that investigation was that as it worked off its backlog of 563 cars, the lack of new business between 1980 and late 1982-83 would result in lay-offs. During the judicial review of the Commission's unanimous negative determination in that investigation, the Commission, again unanimously, informed the U.S. Court of International Trade that the assumption Budd would be awarded no new business was "completely speculative." 56/

There are three basic distinctions between the 1980 findings of the Commission and the majority vote in this investigation. First, the Budd Company's backlog has now expanded to over 1,000 cars, while its average production over a 5-year period was only 62 cars per year. Second, the Commission has information on its record that Budd will not be confronted with competition from Bombardier in the foreseeable future. Third, in the 1980 antidumping proceeding, the Budd Company was a domestic producer within the meaning of section 771(4) of the Act. It cannot be viewed as any more than a provider of services in the present contract.

The consequences of the majority vote

Preliminary investigations conducted under the Act are record proceedings. Had the majority voted negative in this case, judicial review of

55/ See, Rail Passenger Cars and Parts Thereof . . ., supra, note 12.
56/ Supplemental Views, supra, note 13, at 14.

the determination in the U.S. Court of International Trade would have been available--if the Court had found the Budd Company to have had standing. A negative determination would have been supported by more than substantial evidence on the record.

The consequences of the majority vote are far reaching, going beyond the effect on participants in this proceeding. Persons who appear before the Commission in antidumping and countervailing duty investigations ordinarily have difficulty predicting an outcome where there are no publicly available statistics for the domestic production of the like product and the size of the domestic market for imported and domestic articles. Before this majority vote, however, they could have found comfort in the presence of statutory guidelines for the determination of the scope of the industry. These guidelines at least indicate to all participants those producers whose output will be considered. In addition, an economic analysis of the impact of the complained-of imports on that market is also assured by the criteria in the statute. This apparently had not always been the case. 57/ The majority vote in this case throws into jeopardy the integrity of the carefully defined role of preliminary investigations created by Congress in its revisions of the law in 1979.

57/ Prior to the enactment of Title VII, one domestic industry witness complained to the House Subcommittee on Trade that--

> the Commission seems to be able to use nearly any criterion or any vague means it desires to determine whether there is injury or not. And we would like to know definitely what constitutes it.

Subcomm. on Trade of the House Ways and Means Comm., 95th Cong., 1st Sess., Hearings on the Adequacy and Administration of the Antidumping Act of 1921 (Serial 95-46), 95th Cong., 1st Sess., Nov. 8, 1977.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On June 3, 1982, the Budd Co., Troy, Mich. (Budd), filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) alleging that imports from Canada of certain parts for subway cars to be delivered to the Metropolitan Transportation Authority of New York City will receive subsidies from the Canadian Government and that, by reason of these imports, an industry in the United States is being materially injured and threatened with material injury. Budd filed its petition following an announcement by the Metropolitan Transportation Authority of New York City (MTA) on May 18, 1982, that it had awarded to Bombardier, Inc., Montreal, Quebec, Canada (Bombardier) a contract valued at nearly $660 million for the production and delivery of 825 subway cars. Budd was an unsuccessful bidder for this contract.

On June 10, 1982, the petitioner advised Commerce and the Commission that it wished to submit a supplement to its petition and requested that Commerce not consider the petition completely filed until that time. The petitioner filed its supplement on June 24, 1982.

On July 2, 1982, the Commission instituted a preliminary countervailing duty investigation (No. 701-TA-182) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of unfinished rail vehicles and parts thereof provided for in part 6A, schedule 6, of the Tariff Schedules of the United States (TSUS). Section 703(a) directs the Commission to make its determination within 45 days of its receipt of the petition, or in this case by August 9, 1982. A public conference was held in Washington, D.C., on July 21, 1982, at which all interested parties were afforded the opportunity to present information for consideration by the Commission. 1/ The Commission voted on August 3, 1982.

Notice of the institution of the Commission's investigation and of the public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on July 14, 1982 (47 F.R. 30667). A second notice amending the scope of the Commission's investigation to conform with the scope of Commerce's investigation was published in the Federal Register on July 20, 1982 (47 F.R. 31449). 2/ The amended scope of the investigation covers imports from Canada of all rail passenger cars, assembled or unassembled, finished or unfinished, components and parts and accessories thereof and/or to be used therewith.

1/ A list of the participants in the Commission's conference is presented in app. A.

2/ Copies of the Commission's notices are presented in app. B. The Department of Commerce's notice of initiation of a countervailing duty investigation is presented in app. C.

On July 14, 1982, the Commission received a letter from the Industrial Union Department, AFL-CIO, the United Automobile & Aerospace Workers, and the United Steelworkers of America Districts 19 and 31 requesting that they be accepted as copetitioners with Budd in the instant investigation.

Rail passenger cars and parts thereof were the subject of two other investigations conducted by the Commission. In February 1980, the Commission determined in preliminary antidumping investigations 731-TA-5 and 731-TA-6 that there was no reasonable indication of injury or threat of injury to an industry in the United States from imports from Japan and Italy allegedly sold at less than fair value. Subsequently, the U.S. Court of International Trade remanded these cases to the Commission, and, in compliance with the court's order, the Commission issued a supplemental report in March 1981. Shortly thereafter, the court granted a joint motion of the parties to dismiss the appeal.

Nature and Extent of Alleged Subsidies

The source of the petitioner's complaint is the Canadian Government's decision to finance the contract for the MTA, an arrangement which the petitioner considers a subsidy within the meaning of section 701 of the Tariff Act of 1930. The arrangement provides for financing on 85 percent, or $560 million, of the total contract price at an annual interest rate of 9.7 percent. (The contract is discussed in detail in a later section.)

The petitioner also alleges that Bombardier has received several grants from the Canadian Government through the Department of Regional Economic Expansion. The grants are alleged to have amounted to at least $4.1 million and to have been awarded for primary and secondary expansion projects in several locations.

Other Petitions for Relief by Interested Parties

The Budd Co. has filed for no other forms of import relief in connection with the MTA contract; however, several labor organizations, including the Industrial Union Department, AFL-CIO, the United Automobile & Aerospace Workers, the International Association of Machinists & Aerospace Workers, and Districts 31 and 19 of the United Steelworkers of America, recently filed a petition with the United States Trade Representative (USTR) under section 301 of the Trade Act of 1974. The petition, which was filed on June 3, 1982, requested that the President take steps to restrict the importation of Canadian subway cars built with the assistance of subsidized financing. USTR accepted the petition on July 19, 1982, and its consideration of this matter continues.

Believing the subsidized financing to be a violation of Article 9 of the Subsidies Code and concerned that the MTA contract could become a precedent for subsidization of bids into the U.S. market, USTR, on June 18, 1982,

requested formal consultations with Canada under the General Agreement on Tariffs and Trade. On July 5, 1982, U.S. and Canadian delegations met in Geneva to discuss the alleged violation but no agreement was reached. The two parties have not resumed formal consultations.

The Product

Description and uses

The imported articles complained of are components of subway cars which, after importation, are to be assembled and delivered to the MTA under its contract with Bombardier.

Subway cars, also known as rapid-transit cars, are self-propelled rail passenger vehicles 1/ used in subways or elevated rail systems within a city or between a city and its neighboring suburbs. They differ from other types of self-propelled rail passenger vehicles, like trolleys and street cars, mainly in that they are larger, more heavily constructed, and designed to be connected in greater numbers. They differ from non-self-propelled rail passenger vehicles mainly in that they are smaller, less heavily constructed, and designed to be connected in fewer numbers.

The principal and most costly subway car subassemblies which are generally provided by a single manufacturer are (1) the shell, which generally includes a floor, sides, top, ends, an underframe, and some wiring; the components of the truck, which include (2) the wheels and axles and (3) the truck frame and suspension (casting(s) and bolsters); (4) the coupler assembly, including both mechanical and electrical coupler and draft gear; (5) brakes; (6) the propulsion system, including traction motors, gearing for motors, controls, and auxiliary electricals; and (7) the air conditioning system. Variations of these components are used in most types of rail vehicles. They are always manufactured, however, in accordance with the specifications of the buyer, and specifications from buyer to buyer may vary considerably. The MTA contract requires a propulsion system, a truck casting, and a coupler assembly that are highly specific to New York's needs.

Budd and Bombardier estimate that the above components will account for over *** percent of the material and component cost and for over *** percent of the total cost of fulfilling the MTA contract. It is estimated that, with the exception of the door operators and controls, no other component which may be provided by a single producer will account for more than about 1 percent of the total cost of the contract. 2/

1/ All rail vehicles are generally classified into one of four major groupings: (1) locomotives, which provide propulsion for rolling stock; (2) rolling stock, designed to carry passengers or articles; (3) self-propelled rail vehicles, designed to carry passengers or articles; and (4) service vehicles.

2/ Budd estimates that the cost of the door operators and controls may account for about *** percent of the total cost of the contract.

U.S. tariff treatment

With the exception of the propulsion and air conditioning systems, all of the aforementioned articles are classified under subpart A (Rail Locomotives and Rolling Stock), Part 6 (Transportation Equipment), schedule 6 (Metals and Metal Products), of the TSUS. Axles and wheels are specifically provided for in subpart 6A under items 690.25 and 690.30, respectively. For axles, the column 1 rate of duty 1/ is 0.5 percent ad valorem, an LDDC rate 2/ is not prescribed, and the column 2 rate 3/ is 3 percent ad valorem. For wheels, the column 1 rate is free, and the column 2 rate is 1 cent per pound. Neither axles nor wheels are eligible for duty-free treatment under the GSP. 4/ Subway car shells, truck components, coupler assemblies, and brakes are classified under item 690.40, a basket provision for parts of locomotives and self-propelled rail vehicles. Currently, the column 1 rate of duty for this item is 4.9 percent ad valorem, the LDDC rate is 3.9 percent ad valorem, and the column 2 rate is 35 percent ad valorem. Under the GSP, imports under this item from designated beneficiary developing countries are eligible for duty-free treatment.

At least two TSUS items are applicable to subway car propulsion systems--one for motors of 200 or more horsepower and one for switches and control panels. For motors over 200 horsepower, provided for under item 682.50, the column 1 rate is 5.3 percent ad valorem, the LDDC rate is 4.2 percent ad valorem, and the column 2 rate is 35 percent ad valorem. For switches and control panels, provided for under item 685.90, the column 1 rate is 7.3 percent ad valorem, the LDDC rate is 5.3 percent ad valorem, and the column 2 rate is 35 percent ad valorem. Air-conditioning systems are provided for under item 661.20 and are subject to a column 1 rate of 4.3 percent ad valorem, an LDDC rate of 2.2 percent ad valorem, and a column 2 rate of 35 percent ad valorem. Both propulsion systems and air-conditioning systems are eligible for duty-free treatment under the GSP.

1/ The rates of duty in rate of duty column 1 are most-favored-nation (MFN) rates, and are applicable to imported products from all countries except those Communist countries and areas enumerated in general headnote 3(f) of the TSUS. However, such rates would not apply to products of developing countries which are granted preferential tariff treatment under the Generalized System of Preferences (GSP) or under the "LDDC" rate of duty column.

2/ The rates of duty in rate of duty column "LDDC" are preferential rates (reflecting the full U.S. MFN concessions rate for a particular item without staging) and are applicable to products of the least developed developing countries designated in general headnote 3(d) of the TSUS which are not granted duty-free treatment under the GSP. If no rate of duty is provided in the "LDDC" column for a particular item, the rate of duty provided in column 1 applies.

3/ The rates of duty in rate of duty column numbered 2 apply to imported products from those Communist countries and areas enumerated in general headnote 3(f) of the TSUS.

4/ The GSP, under title V of the Trade Act of 1974, provides duty-free treatment of specified eligible articles imported directly from designated beneficiary developing countries. GSP, implemented by Executive Order No. 11888 of Nov. 24, 1975, applies to merchandise imported on or after Jan. 1, 1976, and is scheduled to remain in effect until Jan. 4, 1985.

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U.S. Producers

The Budd Co., a subsidiary of Thyssen AG, Dusseldorf, West Germany, accounts for about half of the self-propelled rail passenger cars and shells therefor currently assembled in the United States. 1/ Budd is a large, diversified, multinational corporation with manufacturing plants in several locations in both the United States and abroad. Overall sales for Budd in 1981 were in excess of $1 billion. In addition to assembling self-propelled rail passenger cars and shells, the company assembles other types of rail passenger cars and shells and also manufactures automotive parts and assemblies, truck equipment, and other industrial products. Sales of rail passenger cars accounted for *** percent of Budd's overall sales in 1981.

Budd assembles all of its rail passenger cars and car shells in one plant in Philadelphia, Pa., although for the MTA contract, Budd indicated that it would also utilize a facility in Hornell, N.Y. It would be necessary for Budd to make certain improvements and modifications to the Hornell plant in order for the plant to produce subway cars. 2/ The shell is the only major rail passenger car component that Budd manufactures. 3/ Budd subcontracts all other major components to other domestic and foreign producers. The shell, too, may be subcontracted, depending on the nature of the contract and the company's needs. (A list of U.S. producers of major components is shown in app. D). Table 1 shows Budd's intended sources of these components for the MTA contract (based on preliminary price discussions and other considerations), Budd's estimates of the cost of these components in terms of the total contract, and Budd's estimate of the cost of final assembly and overhead. 4/ Budd intended to have the shell, the castings and bolsters, and

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1/ General Electric Co., Erie, Pa., and Boeing-Vertol Co., a Division of Boeing Co., Philadelphia, Pa., are currently assembling self-propelled rail passenger cars under subcontracts with Japanese firms. Unlike the petitioner, neither offers services as a prime contractor for supplying rail passenger cars.

2/ Budd has an option until the middle of September 1982 to lease this facility for 10 years from the Hornell Industrial Development Agency. Until recently, this facility was used by the General Electric Co. (GE) to rehabilitate locomotives and rail passenger cars.

3/ At one time, Budd also manufactured castings.

4/ The total value of the Budd proposal as shown in table 1 assumes that certain conditions in the contract allowing for price reductions would be satisfied. If, for example, the truck that Budd proposed for the MTA contract passed certain tests, the contract price would be reduced by $23,337 per car. The final negotiated price, before these possible reductions, is $799,885 per car, or a total contract value of $660 million.

much of the propulsion system (together representing an estimated *** percent of Budd's total cost of fulfilling the MTA contract) subcontracted abroad. 1/ All of the other major components Budd intended to have produced in the United States.

Bombardier also assembles rail passenger cars in the United States. Its operations are discussed in the following section.

Another prime contractor for rail passenger cars, Pullman-Standard Co., Chicago, Ill., ceased bidding on contracts for such vehicles in 1979; however, the firm still retains the capacity for assembling such equipment.

The Canadian Producer

Bombardier also assembles rail passenger cars in the United States and Canada, and, like the petitioner, the shell is the only major component it produces. Its rail passenger car plants are in two locations, one in Quebec, Canada, and one in Barre, Vt. 2/ Like the petitioner, it subcontracts for major components and subassemblies from numerous suppliers in the United States and elsewhere. Table 2 shows Bombardier's intended sources of these major components for the MTA contract, which it will fulfill under license from Kawasaki Heavy Industries, and Bombardier's estimates of the cost of these components. The total value of the contract shown in table 2 reflects Bombardier's final negotiated price. Bombardier will fabricate the shells for the MTA contract in its facilities in Quebec. All of the other major components Bombardier intends to have produced in the United States. Final assembly is to take place in Bombardier's plant in Barre, Vt. The engineering and design of the cars is to be supplied by Kawasaki Heavy Industries under license. The Export Development Act of Canada, 1968-1969, under which the Canadian Government has provided funding for the MTA contract, requires a minimum Canadian content of 60 percent of the value of the contract. The major components which Bombardier intends to obtain in the United States account for *** percent of the total value of the contract, as currently estimated. At this time, Bombardier credits at least *** or about *** percent of the total contract, to the value of final assembly at Barre.

No prices or contracts have been finalized with any producer of a major component. According to Bombardier, however, preliminary price discussions have taken place with prospective subcontractors, and no sources outside the United States are being considered for the major subassemblies. Bombardier will not enter into final negotiations with its prospective subcontractors until it receives a formal notice to proceed from the MTA. This notice is not expected until early August, after the MTA and the Canadian Government draft the final details of the financing arrangement. Full-scale production on subway cars for the MTA contract are scheduled to begin approximately 28 months after the notice to proceed.

1/ The steel used in the construction of the shell will be of U.S. origin.
2/ The Barre, Vt. facility went into operation in 1981. Bombardier has been assembling rail passenger cars in Canada since the mid-1970's.

The MTA Contract

In April 1981, the MTA solicited bids for the production and delivery of 325 subway cars with options for the delivery of an additional 825. Four subway car builders responded: Bombardier; Budd; Francorail, a consortium of French industrial companies; and Kawasaki Heavy Industries of Japan. Pullman-Standard Co. considered submitting a formal proposal for this contract and began bid preparation; however, after discussions with the MTA and in view of the financing offered by the Canadian and French Governments, the firm decided to cancel its efforts. Nissho Iwai American Corp. representing Kawasaki, was awarded a contract for 325 subway cars in March 1982. Negotiations between the MTA and the other 3 bidders continued until May 1982, when a contract was awarded to Bombardier for the remaining 825 cars, the largest subway car contract ever to be awarded to a single contractor.

According to the MTA, its decision to award the contract to Bombardier was contingent upon 7 major factors:

1. The availability of Government-supported financing from the vendors;
2. The cost of the financing;
3. The price of the cars;
4. Delivery schedules, including reliability of delivery;
5. Quality of design, engineering, and performance, including compatibility with Japanese-built cars already ordered by the MTA;
6. Possible overdependence on a supplier, and;
7. New York state content.

The MTA considered Bombardier's final offer to be superior to Budd's on all seven criteria, with the possible exception of price, which, if certain provisions of Budd's offer were acceptable to the MTA, may ultimately have been lower, albeit marginally. The financing offered by Bombardier was a crucial factor in the MTA's decision. As early as February 1981, John D. Simpson, president of the New York City Transit Authority, expressed publicly the city's concerns in connection with funding the new subway cars. 1/ Bombardier's offer provided financing on 85 percent of the total contract price ($560 million) at an interest rate of 9.7 percent per annum, to be repaid in 20 equal semiannual installments beginning 6 months after shipment of all cars. The entire loan is to be supplied by the Export Development Corporation of Canada. In contrast, Budd offered financing on only 17 percent of the contract price, part at 8.5 percent with repayment over 9 years and part at 10.25 percent with repayment over 5-1/2 years. In terms of a net present value of the cost of the respective proposals, a means of comparison utilized by the MTA in evaluating each proposal's merits, the MTA

1/ See Railway Age, Feb. 23, 1981.

would realize a savings of $36 million in choosing Bombardier's proposal in lieu of Budd's. This represents a savings of about $241 million in future payments. The calculation of net present value, a standard tool of weighing alternative investment proposals throughout industry, incorporates the price of the cars and all financial details, including rate of interest, and the size, timing, and number of payments. It also incorporates several assumptions.

Price.--Bombardier's price per car is $798,770. Budd's offer price per car is $770,768; however, MTA believes that certain other charges must be included in Budd's price. Two minor adjustments bring Budd's price to $776,648 per car, 2.8 percent lower than Bombardier's price. MTA told all bidders that it wished to retain 3.0 percent of the total contract price until it had finally accepted all the cars. Budd's bid included a price increase of $2,061 per car, if the MTA insisted on this provision. Furthermore, MTA asked each bidder for price quotes that included braking components from New York Air Brake. Bombardier stated that it would use New York Air Brake's components at no extra charge to the MTA. Budd stated that if it used New York Air Brake's components, its price would be $3,819 higher per car.

Budd's offer price also assumes that the undercarriage that will be manufactured by Equipamentos Villares in Brazil will pass New York City Transit Authority (NYCTA) qualification tests. If the NYCTA does not accept the Villares truck, then Budd will increase its price by $23,237 per car. This additional charge would bring Budd's price up to $799,885, 0.1 percent higher than Bombardier's price. Villares, a licensee of Budd and Westinghouse Electric, has successfully supplied trucks for the Sao Paulo and Rio de Janeiro subway systems. Budd contends it has no doubt that NYCTA would find the Villares truck acceptable. 1/

Financing.--Both the availability and the terms of financing were important to the MTA. MTA plans to spend nearly $8 billion over 5 years to improve its facilities. 2/ It feels that it may be unable to raise enough funding to finance these projects from the bond market. Therefore, the MTA encouraged all bidders to offer financing with their bids.

Bombardier offered to finance 85 percent of the value of the contract over a 10-1/2 year period at a 9.7-percent rate of interest. Budd offered financing of 17 percent of the value of the contract over a 9-1/2-year period at a weighted average interest rate of 9.2 percent. This financing represented buyer's credits from Brazil and Portugal for the components to be produced in those countries. 3/ Thus, Bombardier offered to finance a much larger part of the contract than did Budd.

1/ Testimony of John Doane, Treasurer of Budd, at the MTA hearing, June 10, 1982, p. 115.

2/ Testimony of Richard Ravitch, chairman, Metropolitan Transit Authority, before the Senate Finance Committee, May 28, 1982.

3/ Testimony of John P. Doane, Treasurer, the Budd Co. before the Senate Finance Committee, May 28, 1982. The 9.2-percent interest rate is a weighted average of Brazil's 8.5-percent interest rate and Portugal's 10.25-percent interest rate.

Present value.--As previously stated, the MTA compared the costs of the Bombardier and Budd railcars by comparing present values. The present value is the amount of money that if paid today would be equivalent to a schedule of future payments, assuming that the firm faces a given rate of interest.

The calculation of present value is based on a weighted sum of a series of payments. Payments that are further away in time receive lower weights, because if a purchaser can postpone payments for its equipment, it may be able to reduce its other borrowings or to retain its earnings in interest-bearing accounts for a longer period of time. Thus, if other factors remain constant, purchasers will prefer financing packages that allow them to postpone payments for as long as possible. As a result, the full cost of a purchase will depend not only on the price and interest rate but also on other factors affecting the timing and size of the payments. The benefits of postponing payments depend on the market interest rates, because if payments were not postponed, then the purchaser would have to reduce its lending or increase its borrowing at these rates. Therefore, present value will also depend on the market interest rate.

The MTA and Morgan Bank, its financial advisor, calculated the present value of payments in the Budd and Bombardier contracts under a variety of different assumptions. The results of these calculations are shown in table 3. Given the financing terms in each firm's bid, the present value of Bombardier's contract was $517 million dollars, 6.5 percent lower than the present value of Budd's contract. Had neither firm offered any financing, the present value of Bombardier's contract would have risen to $598 million dollars, 5.1 percent higher than Budd's.

Table 3.--Subway cars: Present values of the Budd and Bombardier contracts under different assumptions concerning financing

Financing	Present value		Difference in present value	
	Budd	Bombardier	Value	Share
	Million dollars			Percent
As in Bid	553	517	36	6.5
None	569	598	(29)	(5.1)
As in Arrangement 1/	560	570	(10)	(1.8)

1/ "International Arrangement on Export Credits" of the Organization of Economic Cooperation and Development.

Source: Estimates done by the Metropolitan Transit Authority, Morgan Bank and the U.S. Department of the Treasury.

Had the financing offered by Budd and Bombardier conformed to the minimum terms of the "International Arrangement on Export Credits" of the Organization of Economic Cooperation and Development (OECD), Bombardier's financing would be limited to 85 percent of the Canadian content of the cars; its interest rate would be 11.25 percent, and repayment would be required in 8.5 years. Adherence to these terms would raise the present value of Bombardier's bid to $570 million dollars and the present value of Budd's bid to $560 million dollars. Thus, were the arrangement terms to be followed, the cost of the Bombardier contract would be 1.8 percent higher than the cost of the Budd contract.

Bombardier's financing package reduces the present value of its contract by $81 million, or 13.5 percent, as shown by the data in table 3. However, if the MTA had to finance its purchase of the Bombardier subway cars through market rather than Bombardier's financing, total interest payments over the life of the contract would be $241 million dollars higher. 1/ The apparent disparity between these two numbers is caused by the way present value is calculated. The total reduction in interest payments is the simple sum of the difference in interest payments in each year; the reduction in present values is the weighted sum of the differences in payments. The weights used in present-value calculations are all less than one, so their use reduces the absolute dollar amounts involved.

Present-value calculations are based on certain assumptions. The major assumptions involved in these calculations concern the price of the Budd cars, the market interest rate the MTA faces, and the amount of escalation in each contract.

The present values in table 3 are based on a Budd price of $776,648. This price includes additional charges for the MTA's retention requirement and for the use of New York Air Brake components, but does not include the extra charge were the MTA to find the Villares truck unacceptable. If Budd were unable to use this truck, its price per car would increase by $23,237, so the present value of its contract would rise by $16 million. This increase does not include the effects of the loss of the Brazilian export credit on these trucks; that loss would further increase the present value of Budd's contract.

These present-value calculations also assume that the MTA faces a 14-percent rate of interest. The portion of each bid that is not financed by the seller is assumed to be financed by the issuing of bonds at 14 percent. However, if the MTA had to issue bonds to raise the large amount of additional financing needed for subway purchases, the interest rate on those bonds might increase. A higher rate of interest would make Bombardier's seller financing more valuable. For example, at a 15-percent interest rate, Budd's present value is $537 million and Bombardier's present value is $490 million, 8.8 percent lower than Budd's.

1/ This figure was calculated by the staff of the U.S. Department of the Treasury. Like the present-value calculations, this figure assumes the MTA faces a 14-percent market rate of interest.

The third assumption concerns the amount of escalation in each contract. Because delivery under both the Budd and Bombardier contracts will not be completed for several years, each contract contains an escalation clause that adjusts the final price of the cars upward with movements in U.S. Government indexes of wages and material prices. The escalation clauses in the two contracts are different. Budd's escalation clause applies to a slightly higher percentage of the contract value than Bombardier's, but Bombardier's escalation clause places comparatively greater weight on the labor-cost index. Wages will probably rise faster than material prices. The present value estimates assume that wages increase at an 8.5-percent annual rate while material costs increase at an 8.0 percent annual rate. The MTA's estimate of the present value of Budd's bid includes $117 million in extra costs due to the escalation clause, 21.2 percent of the total value of $553 million. The MTA's estimate of the present value of Bombardier's bid includes $133 million in extra costs due to the escalation clause, 25.6 percent of the total value of $520 million.

Other factors

The MTA considered several factors other than price and financing when choosing between Budd and Bombardier. These factors are delivery schedules, New York State content, compatibility with other MTA equipment, and a desire not to be overly dependent on any single supplier for major items of equipment that are critical to the operations of the transit system.

Budd promised both to start and to complete delivery before Bombardier. Budd promised to deliver all cars by October 1986, and Bombardier, by May 1987. The MTA officials, however, stated that they felt Bombardier was more likely to adhere to its delivery schedule, because Bombardier has recently been more reliable in delivering subway cars on time than has Budd. The MTA was particularly concerned that Budd's deliveries would be late, because Budd would assemble the cars in a plant at Hornell, N.Y., that had not previously been used to assemble railcars. 1/ Budd insisted that if the Hornell plant were used for assembling the cars, the MTA waive damages for the first two months of delay.

The MTA estimated that the New York State content of Budd's cars was 12 percent of their cost. The New York State content of Bombardier's cars was 16 percent of their cost, and Bombardier promised to try to raise that to 20 percent. In New York State, the Budd contract would generate 2,340 years of employment; the Bombardier contract would generate 2,384 years of employment. 2/ Budd contends that MTA's estimates of its New York State content are too low, because if it uses New York Air Brake components, its new York State content will be approximately 19 percent. 3/

1/ Testimony of John Simpson, president of the NYCTA, before the MTA, June 10, 1982, pp. 29-36.

2/ Estimates of employment are from the New York State Department of Commerce.

3/ Testimony of John Doane, op. cit., pp. 116-117.

Bombardier's cars have the advantage of being compatible with 325 cars the MTA has already ordered from Kawasaki. Bombardier will produce its cars using a design licensed from Kawasaki. This similarity of design will reduce MTA's maintenance costs. 1/

The MTA also wants to increase the number of sources for its equipment. It recently made a substantial purchase of commuter cars from Budd. By ordering from Bombardier, the MTA increases its number of suppliers for equipment in general and for cars following the Kawasaki design in particular. A memorandum which the MTA submitted to the New York State Public Authorities Control Board summarizing its consideration of the proposals in terms of its most important criteria is shown in appendix E.

The MTA, in its contract with Bombardier, has agreed that if a countervailing duty order should be issued, the financing agreement with the Canadian Government will be modified in such a way to offset or eliminate any net subsidy which is found to exist. 2/ According to the MTA, it is willing to take such steps to offset a subsidy, because it believes Bombardier's proposal is worth accepting even at a higher cost. 3/

The factors on which the MTA based its decision were also the subject of a recent review and determination by the U.S. Department of the Treasury (Treasury). The results of this review are summarized in the following section.

Decision of the Secretary of the Treasury on the Financing of Subway Cars for the MTA

Consequent to the MTA's awarding of the subway-car contract to Bombardier, Budd formally requested Treasury to allow the Export-Import Bank of the United States (Eximbank) to match the Canadian financing under section 1912 of the Export-Import Bank Act. The act allows the Secretary of the Treasury to authorize special financial assistance by the Eximbank to any U.S. firm which has been placed at a competitive disadvantage for sales in the United States because of the availability of foreign export financing to a foreign competitor. In order for Treasury to authorize such assistance, three statutory conditions must be satisfied:

1. The financial assistance to the foreign competitor must exceed the limits allowable under the International Arrangement of Export Credits;

2. The foreign competitor must be asked to withdraw the financing and then refuse to do so; and

3. The financing offered by the foreign competitor must be a determining factor in the final award.

1/ Testimony of John Simpson, President of NYCTA, op. cit., p. 26.
2/ Transcript of conference, p. 138.
3/ Ibid., p. 139.

On July 12, 1982, the Secretary of the Treasury concluded that although the Canadian Government's financing offered to Bombardier exceeded allowable international limits and that the Canadian Government refused to withdraw the offer despite repeated requests by Treasury, the financing offered by the Canadian Government was not likely to be a determining factor in the MTA's decision, because Bombardier would have been awarded the contract even if Budd were able to offer matching financing. The conclusion assumes that under a matching financial arrangement, other aspects of Budd's offer would have remained constant. Treasury's decision and findings are shown in appendix F. Budd's rebuttal to these findings is shown in appendix G.

The Question of Material Injury and Threat Thereof

Budd Co.

Component suppliers

In an effort to ascertain the potential effect of future imports of major rail passenger car components from Canada, the Commission contacted by telephone all known U.S. producers of these products (see app. D for listing). Of the 24 producers of major rail passenger car components in the United States, 20 indicated that they would not be injured by imports of like products from Canada in connection with the MTA contract award. Several reasons were cited:

1) There is as much likelihood of winning (or losing) a subcontract with Bombardier as with Budd;

2) They are not interested in bidding on a subcontract;

3) The design specifications of the MTA contract preclude the use of their product; and

4) Sales of the product in question are a relatively small part of their overall operations.

The remaining 4 producers--***--either stated or implied that they may be injured because they were less likely to receive a subcontract from Bombardier than from Budd. ***.

Wheels and axles.--At least 10 firms produce wheels and axles for rail passenger cars in the United States. Four firms--Abex Corp. New York, N.Y.; Edgewater Steel, Oakmont, Pa.; Griffin Wheel, Chicago, Ill.; and X-Tek, Cincinnati, Ohio--produce wheels only; 3 firms--Bethlehem Steel, Bethlehem, Pa.; Standard Forging, East Chicago, Ind.; and Timkin, Canton, Ohio--produce axles only; 3 firms--Penn Machine, Pittsburgh, Pa.; Standard Steel, Burnham, Pa.; and United States Steel, Pittsburgh, Pa., produce both wheels and axles. ***.

Truck castings and bolster.--Only one firm in the United States--Buckeye Steel Castings--currently produces truck castings for subway cars. ***.

Coupler assembly.--There are four U.S. producers of the complete coupler assembly and one, Dresser Industries Inc., Depew, N.Y., which manufactures the drawbar assembly only. The 4 which manufacture the complete assembly include the Ohio Brass Co., Mansfield, Ohio; Dellner-Schaku, Mt. Prospect, Ill.; Walton Products, Broomall, Pa., and Westinghouse Airbrake Co. (WABCO), Wilmerding, Pa. ***.

Brakes.--Two firms--New York Airbrake Co., Watertown, N.Y., and WABCO--produce brakes for rail passenger cars in the United States. ***

Propulsion system.--Three firms in the United States produce propulsion systems for rail passenger cars: GE, Erie, Pa.; Westinghouse Electric Corp., Buffalo, N.Y. and West Mifflin, Pa.; and the Garrett Corp., Torrance, Calif. ***

Air-conditioning system.--Four firms in the United States manufacture air-conditioning systems for rail passenger cars: Safety Electric, Wallingford, Conn.; the Trane Co., La Crosse, Wis.; Air Control Industries (ACI) Irvine, Calif.; and Lear Sigler Energy Products, Santa Ana, Calif. ***.

Producers of other components.--The Commission also contacted by telephone U.S. producers of other components which, although relatively marginal in terms of total value of the MTA contract, were specific to rail passenger cars. These components include the automatic door system (door operators and controls), the seats, and the windows (including sashes). It is estimated that the value of the automatic door systems will account for about *** percent of the total cost of the contract; seats and windows (including sashes) will each account for a little over *** percent.

Automatic door system.--there are three producers of automatic door systems for rail passenager cars in the United States: the Nycal Co., South Hackensack, N.J.; Vapor Corp., Chicago, Ill.; and Westcode, Inc., Frazer, Pa. ***.

Seats.--At least five firms in the United States produce or have the capability to produce seats for rail passenger cars: American Seating Co., Grand Rapids, Mich.; AMI Industries, Inc., Colorado Springs, Colo.; Coach & Car Equipment Corp., Elk Grove Village, Ill.; Seats, Inc., Reedburg, Wis.; and U.S. Seating Co., Inc., Topton, Pa. ***.

Windows (including sashes).--Only one firm in the United States--Ellcon-National, Totowa, N.J.--is known to produce both windows and window sashes for rail passenger cars. ***.

It is estimated that all other components for subway cars to be delivered to the MTA would each account for less than 1 percent of the total cost of the contract. Moreover, unlike the major components, which are specific to rail passenger cars, these items are sold in many different markets for many different uses. For this reason, it would be extremely difficult to assess the impact of imports of these items on a U.S. industry. Neither Budd nor Bombardier can state at this time whether or not any of these items would be imported. However, in order to achieve 60 percent Canadian content, Bombardier would have to source many small-value items, such as fasteners, carpet, wiring, tile, and so forth, in Canada.

Labor

Three labor unions--the United Automobile & Aerospace Workers (UAW), the United Steel Workers of America, and the Industrial Union Department of the AFL-CIO--testified at the Commission's conference that they were injured and were threatened with injury. 1/ The UAW represents 1,300 production workers, as well as 300 white- collar and clerical workers and draftsmen at Budd. The United Steel Workers represents several thousand workers employed by at least 16 firms which produce components for the subway car industry. No estimate was given by the AFL-CIO of the number of workers that would be affected. In addition to pointing out the immediate injury to Budd engineers and to workers of subway-car parts suppliers, representatives of these unions stressed that continued subsidies by foreign governments, such as the Canadian Government's support of Bombardier, would gradually eliminate Budd and U.S. component suppliers from the rail passenger car market.

Future contracts

A similar view to that of the labor unions was expressed by ***. These firms indicated that, although they were not adversely affected by the MTA contract, they may be so affected by future contracts awarded to foreign car builders on the basis of government subsidies and expressed concern over this precedent.

Anticipated orders for rail passenger cars in the United States through 1988, by purchasers, are shown in table 5. From 1982 to 1988, it is expected that between 2,400 and 2,800 cars will be ordered by several cities in the United States. It should be noted, however, that contracts for well over half

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1/ Transcript of the conference, pp. 49-50, 52-53, 58-61, 63-64, and 75-76.
2/ Transcript of the conference, pp. 163-168.

of these cars have already been awarded. Bombardier has indicated to the Commission that, because of capacity limitations, it does not intend to bid on any major contracts for subway cars while fulfilling its obligations to the MTA. 1/ It may, however, bid on small orders for light rail vehicles, such as trolleys and street cars. It has no plans for expansion of its facilities in Canada.

1/ Transcript of the conference, pp. 163-168.

Table 5.--Rail passenger cars: Anticipated orders in the U.S. market, by purchasers and by types of cars, 1982-88

Purchaser	Rapid-transit	Light rail vehicle	Commuter	Total
Atlanta (MARTA)	30-100	-	-	30-100
Boston (MBTA)	-	50-100	-	50-100
Cleveland (GCRTA) 1/	60	-	-	60
Connecticut (CDOT)	-	-	100	100
Detroit (SEMTA)	-	88	17-45	105-133
Honolulu	85	-	-	85
Los Angeles (SCRTD)	120-132	-	-	120-132
New Jersey (NJ Transit)	-	-	0-37	0-37
New York (NYCTA) 2/	1,376	-	-	1,376
New York (MTA-Car-rail) 3/	-	-	126	126
New York (MTA-LIRR) 3/	-	-	146	146
Philadelphia (SEPTA)	15	30	50	95
Pittsburgh (PAT) 4/	-	55	-	55
Sacramento (STDA)	-	26-28	-	26-28
San Francisco (BART)	64-154	-	-	64-154
San Francisco (MUNI)	-	34-42	-	34-42
Total	1,750-1,922	283-343	439-504	2,472-2,769

1/ Purchased 60 rapid-transit cars from Tokyo Car, Japan.

2/ Purchased 325 rapid-transit cars from Nissho-Iwai America (Kawasaki Heavy Industries, Japan) and plans to purchase 825 rapid-transit cars from Bombardier, Inc., Canada.

3/ Purchased 130 commuter rail cars from Budd Co. and exercised an option for 186 additional cars for these systems; 316 cars purchased is greater than the 272 cars anticipated.

4/ Purchased 55 light rail vehicles from Siemens, Inc., West Germany.

Source: Railway Age, Jan. 11, 1982, p. 15, and the Urban Mass Transportation Authority.

APPENDIX A

PARTICIPANTS IN THE COMMISSION'S CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Investigation No. 701-TA-182 (Preliminary)

CERTAIN RAIL PASSENGER CARS AND PARTS
THEREOF IMPORTED FROM CANADA

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the subject investigation on July 21, 1982, in the hearing room of the USITC Building, 701 E. Street N.W., Washington, D.C.

In support of the imposition of
countervailing duties

Barnes, Richardson & Colburn--Counsel
Washington, D.C.
on behalf of

The Budd Company

Paul Sichert, Vice President, The Budd Co.
Thomas I. Davenport, Corporate Counsel, The Budd Co.

James H. Lundquist)
Andrew P. Vance) --OF COUNSEL

Collier, Shannon, Rill & Scott--Counsel
Washington, D.C.
on behalf of

The Committee of American Subway Car Suppliers
Standard Steel Company
Allegheny Ludlum Steel Corporation
Coach and Car

David A. Hartquist)
Paul C. Rosenthal) --OF COUNSEL

Industrial Union Department, AFL-CIO;
United Automobile and Aerospace Workers; and
United Steelworkers of America Districts 19 and 31

David Mallino, Legislative Representative
United Steelworkers of America

Lee Price, International Trade Economist
United Automobile and Aerospace Workers

Brian Turner, Executive Assistant to the President
Director of Legislation and Economic Policy
Industrial Union Department, AFL-CIO

In opposition to the imposition of countervailing duties

Dechert, Price & Rhoads--Counsel
Philadelphia, Pa.
on behalf of

Bombardier, Inc.

A. Carl Mawby, Vice President of Marketing, Bombardier, Inc.

William Kennedy)
Brett A. Schlossberg) --OF COUNSEL

Mudge Rose Guthrie & Alexander--Counsel
Washington, D.C.
on behalf of

Metropolitan Transportation Authority of New York City

Steven M. Polan, Special Counsel, MTA

John J. Kirby)
William N. Walker)--OF COUNSEL
David A. Vaughan)

APPENDIX B

COMMISSION'S NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-104]

Certain Card Data Imprinters and Components Thereof; Grant of Stipulated Motion of All Parties for Continued Suspension of Investigation

AGENCY: International Trade Commission.

ACTION: Grant of motion for continued suspension of investigation.

SUMMARY: Notice is hereby given that the Commission has granted a stipulated motion by complainants AM International, Inc., and Bartizan Corp., respondents National Business Systems, Inc. (Canada), and National Business Systems, Inc. (U.S.), and the Commission investigative attorney that the Commission continue its suspension of this investigation (Motion 104-189C).

AUTHORITY: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.15 of the Commission's Rules of Practice and Procedure (19 CFR 210.15).

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by AM International, Inc., and Bartizan Corporation the Commission instituted investigation No. 337-TA-104 to determine whether there is a violation of section 337 of the Tariff Act of 1930 by reason of unfair methods of competition and unfair acts in the importation and sale of certain card data imprinters, alleged to infringe claim 7 of U.S. Letters Patent 3,272,120 and claim 12 of U.S. Letters Patent 3,340,800. Notice of the Commission's investigation was published at 46 FR 31094 (June 12, 1981).

On February 9, 1982, the Commission granted a motion by respondents National Business Systems, Inc. (Canada) and National Business Systems, Inc. (U.S.), for a limited suspension of the investigation until 10 days after completion of trial in United States district court litigation involving the patents that are at issue in this investigation. The present action of the Commission continues the suspension in effect until 10 days after the court rules on the matters at issue in the trial before it.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0189.

Issued July 2, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-19140 Filed 7-13-82 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-182 (Preliminary)]

Certain Imported Unfinished Subway Cars and Parts Thereof To Be Delivered to the Metropolitan Transportation Authority of New York City

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation and scheduling of a public conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of an investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of unfinished subway cars and parts thereof, to be delivered to the Metropolitan Transportation Authority of New York City, the purchase of which is alleged to be financed by the Export Development Corporation of Canada.

In making its determination for purposes of this preliminary investigation the Commission will examine information on unfinished rail vehicles and parts thereof provided for in part 6A of schedule 6 of the Tariff Schedules of the United States (TSUS).

EFFECTIVE DATE: June 24, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0296.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed June 24, 1982, on behalf of the Budd Company of Troy, Michigan. A copy of this petition is available for public inspection in the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition or by August 9, 1982 (19 CFR 207.17). Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission not later than July 21, 1982 (19 CFR 201.11). Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice. This investigation will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 47 FR 6190, February 10, 1982), particularly Subpart B thereof.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before July 23, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen (14) copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on July 21, 1982, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Ms. Vera Libeau, telephone 202/523-0368, not later than July 16, 1982, to arrange for their appearance. Parties in support of the

imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201), 47 FR 6182, February 10, 1982. Further information concerning the conduct of the conference will be provided by Ms. Libeau.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: July 8, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-19043 Filed 7-13-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-110]

Certain Methods for Extruding Plastic Tubing; Termination of Respondent

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to respondent Sue Trading Co.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondent Sue Trading Co. (Sue) on the basis of representations contained in a motion to terminate filed by respondent Sue.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a and concerns alleged unfair trade practices in the importation and sale of certain extruded plastic tubing and reclosable plastic bags allegedly made by a process which, if practiced in the United States, would infringe patents owned by complainant Minigrip, Inc.

The motion to terminate was based generally on the grounds that Sue's involvement in this investigation is *de minimus*, that it has not imported reclosable plastic bags since 1976, that it has nothing further to contribute to this adjudication, that continued participation in the investigation will create undue hardship and expense to respondent, and that the termination of the respondent would not affect detrimentally the conclusion of this investigation.

The motion was opposed by the complainant and the Commission investigative attorney on the grounds that there is a conflict between the allegations of the complaint that Sue openly sells imported Taiwanese reclosable plastic bags and Sue's factual representation in its motion which should be resolved based on presentation of evidence at the trial. However, the trial has now been concluded and no evidence was offered to contradict Sue's representations. Complainant also filed no response to an order to show cause why Sue should not be terminated.

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, Telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Eliza Patterson, Esq., Office of the General Counsel, Telephone 202-253-0480.

Issued: July 9, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-19044 Filed 7-13-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-108]

Certain Vacuum Bottles and Components Thereof; Termination of Respondent

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to respondent Progressive International Corp.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondent Progressive International Corp. (Progressive) on the basis of a joint motion filed by complainant Union Manufacturing Co., respondent Progressive, and the Commission investigative attorneys.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain vacuum bottles and components thereof. The joint motion to terminate the investigation as to Progressive included affidavits by Kevin Wold, president of Progressive, and Derek A. Dibble, executive vice president of Union. In his affidavit, Mr. Wold stated that Progressive has not imported any vacuum bottles since service of the complaint, and Progressive has sold or otherwise disposed of all the bottles previously imported into the United States. Mr. Wold also stated that Progressive has agreed not to import or sell the allegedly infringing vacuum bottles in the United States, unless and until there is a final decision by the Commission or a court that the vacuum bottles do not infringe complainant's trademark. In his affidavit, Mr. Dibble agreed on behalf of Union to release Progressive from any and all claims for damages.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, telephone 202-523-0359.

Issued: July 9, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-19045 Filed 7-13-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-111]

Certain Vacuum Cleaner Brush Rollers; Settlement Agreement, Recommended Termination of Party, and Request for Public Comments

AGENCY: International Trade Commission.

ACTION: Request for public comments on the recommended termination of respondent Hornleon Co., Ltd. (Hornleon), based on a settlement agreement.

SUMMARY: Notice is hereby given that the presiding officer in this investigation has recommended that the Commission grant the motion of complainant Scott & Fetzer Co. to terminate this investigation as to respondent Hornleon on the basis of a settlement agreement. Before taking final action on the motion, the Commission seeks written comments on the proposed termination from interested members of the public.

DEADLINE: All comments must be received on or before August 13, 1982.

of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(d) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commission, Division 2. Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-19531 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 137]

Contracts for Protective Services

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed exemption.

SUMMARY: In the Federal Register notice of June 18, 1982 (47 FR 26403), the date comments were due in this proceeding on the proposed exemption of contracts for protective services against heat or cold provided to or on behalf of rail carriers and express companies and the related proposed removal of regulations was July 19, 1982. At the request of the Chessie System Railroads, the due date has been postponed to August 2, 1982. Parties who have already filed comments are free to file supplemental statements by that date; however, such comments cannot reply to previously filed comments. The proposed exemption and the proposed removal of regulations published at 47 FR 26409, June 18, 1982, will be considered in a single proceeding and parties need not file duplicating comments.

DATE: Comments are due August 2, 1982.

ADDRESS: Send original and 15 copies to: Ex Parte No. 137, Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

Dated: July 15, 1982.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-19604 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-182 (Preliminary)]

Certain Rail Passenger Cars and Parts Thereof Imported From Canada

AGENCY: International Trade Commission.

ACTION: Changes in the scope of the preliminary countervailing duty investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of changes in the scope of its investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of allegedly subsidized imports from Canada of rail passenger cars, assembled or unassembled, finished or unfinished, components, and parts and accessories thereof and/or to be used therewith.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0368.

BACKGROUND: The purpose of these changes in the scope of the Commission's investigation is to conform the scope of this investigation with that initiated by the Department of Commerce on July 14, 1982.[1]

This notice is published pursuant to § 207.12 of the Commission's rules of practice and procedure (19 CFR 207.12).

Issued: July 16, 1982.

Kenneth R. Mason,
Secretary.

[FR Doc. 82-19787 Filed 7-19-82; 10:24 am]

BILLING CODE 7020-02-M

[1] Published elsewhere in this issue.

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 5, 1982—July 9, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separate,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,867; Maid Lingerie, Inc., North Troy, NY
TA-W-12,866; Chester County Sportswear, Henderson, TN
TA-W-12,864; Aurora Undergarments Co., Inc., Brooklyn, NY
TA-W-12,863; Anita Foundations, Inc., New York, NY
TA-W-12,850; Urethane Rubber Corp., Port Huron, MI
TA-W-12,838; Press Formed Products, Inc., Centerline, MI

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,853; Solvent Finishers Inc., Westbury, NY
TA-W-12,857; Charles M. Reeder & Co., Inc., Highland Park, MI
TA-W-12,872; Ford Motor Co., Ford Export Div., Wixom, MI

APPENDIX C

COMMERCE'S NOTICE OF
INITIATION OF COUNTERVAILING DUTY INVESTIGATION

Federal Register / Vol. 47, No. 139 / Tuesday, July 20, 1982 / Notices 31415

that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of polypropylene film receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by September 17, 1982.

Scope of the Investigation

The merchandise covered by this investigation is polypropylene film, which is a thin transparent film made from polypropylene resin. It is currently provided for in items 774.5590 and 771.4310 of the Tariff Schedules of the United States Annotated.

Polypropylene film is used for packaging a wide variety of articles and in the manufacture of pressure sensitive packaging tape, dielectric material in electrical capacitors, and for wrapping power and communication cables.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of polypropylene film receive the following benefits that constitute bounties or grants: tax certificates under the Certificado de Devolucion de Impuesto ("CEDI") program on exports; tax certificates under the Certificates of Fiscal Promotion ("CEPROFI") program for "priority" industrial activities; and preferential financing under the Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX").

Dated: July 14, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19870 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Railcars From Canada

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in Canada of railcars receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission ("ITC") of this action so that it may determine whether imports of railcars are materially injuring, or threatening to materially injure, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before August 9, 1982, and we will make ours on or before September 17, 1982.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Paul Nichols, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-5497.

SUPPLEMENTARY INFORMATION:

Petition

On June 24, 1982, we received a petition from counsel for the Budd Company ("Budd") on behalf of the U.S. industry producing passenger railway cars. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petitioner alleges that producers, manufacturers or exporters of railcars in Canada receive subsidies within the meaning of section 771(5) of the Tariff Act of 1930, as amended (19 U.S.C. 1677(5)) (the "Act"), and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

In addition, on July 14, 1982, we received a request from the Industrial Union Department, AFL-CIO, the United Automobile and Aerospace Workers, and the United Steelworkers of America (the "unions") to be co-petitioners in this proceeding. This request stated that these labor organizations represent members in the United States subway car manufacturing industry and supplying industries, and specifically the Budd Company and its suppliers for the construction of subway cars for the New York Metropolitan Transit Authority. Budd and the unions appear to be "interested parties" within the meaning of section 771(9) of the Act.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioners supporting these allegations. We have examined the petition on railcars and have found that it meets these requirements.

Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Canada of railcars receive benefits that constitute subsidies within the meaning of section 771(5) of the Act. If our investigation proceeds normally, we will make our preliminary determination by September 17, 1982.

Scope of Investigation

The merchandise covered by this investigation consists of rail passenger cars, assembled or unassembled, finished or unfinished, components, and parts and accessories thereof and/or to be used therewith. This merchandise appears to be currently classifiable under the following *Tariff Schedules of the United States* numbers, *inter alia:* 690.40, 688.06-688.07, 680.14-680.28, 647.01-10, 646.92, 646.95, 690.40, 690.30, 680.30-36, 690.40, 685.90, 690.40, 772.35, 772.36, 690.40, 653.41, 690.40, 640.71-640.72, 682.95-683.15.

The rail passenger cars named in this petition are primarily used as subway car.

Value of Imports

No imports of the railcars referred to in the petition have taken place up to this time. Information supplied in the petition indicates that deliveries to the U.S. market will begin in July, 1984. Nevertheless, a binding agreement for 825 passenger railcars was executed on June 10, 1982. Although the effective date of the actual "award" of the contract is apparently contingent upon the Canadian producer's entry into a specified financing agreement, ratification of the contract by purchaser's Board of Directors, and approval of the contract by a specified New York state agency, each of these conditions is essentially ministerial in nature. The contract becomes effective within seven days after the conditions are satisfied (if satisfaction occurs on or before July 23, 1982). Given the nature of this transaction and the peculiarities of the railcar industry, we determine that a sale to the United States of the subject merchandise has occurred. This industry, like others involved in manufacturing costly, technologically complex products, requires substantial lead time between the negotiation of a sale and actual delivery. Inventories of the finished merchandise are seldom or never maintained because of the frequent need to customize the product to meet the particular customer's

engineering and design specifications. Lead time is also required because such production involves large financial commitments which are seldom feasible in the absence of a binding agreement. Under these circumstances, the lack of actual entries of the subject merchandise will not deter our initiating an investigation. To do otherwise would effectively negate the intended effect of the countervailing duty law when expensive, high technology merchandise is being subsidized, but imported only once (or in very few shipments) long after the sales have occurred. If actual entries were a prerequisite to an investigation, domestic industries would receive no relief between the time the transaction is consummated and entry occurs. In the meantime, the relevant domestic industry could suffer material injury with no recourse available under this law. Furthermore, subsidized export financing like that alleged by petitioner would not be investigated until long after capital allocation has been distorted by foreign and domestic manufacturers' investment decisions made in reliance on, or in response to, such subsidies. Congress did not intend that the statute be interpreted so restrictively as to eviscerate its impact in such transactions. Thus, we conclude that for purposes of initiating this countervailing duty investigation, a sale exists because a contract mandating delivery of the subject merchandise in the United States has been executed. In the event that the issue of subsidized imports becomes moot because all conditions precedent to the "award" of the contract have not been satisfied by July 23, 1982, or the purchaser's right to cancel matures and is exercised prior to July 22, 1982, this investigation will terminate (assuming the terms of the agreement between the Canadian producer and the purchaser have not been changed).

Allegations of Subsidies

The petitioners allege that producers, manufacturers, or exporters in Canada receive the following benefits that constitute subsidies from the government of Canada: preferential financing and Department of Regional Economic Expansion grants ("DREE" grants).

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 9, 1982, whether there is a reasonable indication that imports of railcars from Canada are materially injuring, or threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to the statutory procedures.

July 14, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19839 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council and its Administrative Subcommittee; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established an Administrative Subcommittee. The Council and its Administrative Subcommittee will hold separate public meetings. The Council will hold its 42nd regular meeting to consider status reports on fishery management plans (FMPs) under development; draft FMP framework for the shallow-water reef fish fishery; draft FMP for coastal pelagics resources; draft FMP for the fishery resources of the Puerto Rican and St. Croix Geological Platforms; elect a chair and vice-chair for the Council, as well as discuss other administrative and Council matters. The Administrative Subcommittee will meet to consider matter related to the Council's budget and to discuss regular administrative operations.

DATES: The Council's public meeting will convene on Wednesday, August 25, 1982, at approximately 9 a.m., adjourn at approximately 5 p.m.; reconvene on Thursday, August 26, 1982 at approximately 9 a.m., adjourn at approximately noon. The Council's Administrative Subcommittee public meeting will convene on Tuesday, August 24, 1982, at approximately 1:30 p.m., and will adjourn at approximately 5 p.m.

ADDRESS: The public meetings will take place at the Conference Room of the St. Thomas Hotel and Marina, Long Bay, in St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, telephone: (809) 753–4926.

Dated: July 15, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-19810 Filed 7-19-82; 8:45 am]

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National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Johnson-Matthey Inc., having a place of business at Wayne, Pennsylvania 19087 an exclusive right in the United States and in certain foreign countries to manufacture, use and sell products embodied in the invention, "A Short Total Synthesis of Dihydrothebainone, Dihydrocedeinone, and Nordihydrocodeinone and Preparation of Chiral 1-Benzyl-1, 2,3,4,-Tetra-Hydroisoquinolines Optical Resolution, U.S. Patent Application Serial Nos. 6–165,600 and 6–265,469 (dated July 3, 1980 and May 20, 1981). Copies of the Patent Applications may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1 The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquires, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries,

APPENDIX D

U.S. PRODUCERS OF MAJOR RAIL-PASSENGER-CAR COMPONENTS

Current U.S. producers of Major Rail-Passenger-Car Components

I. Shell the Budd Co., Troy, Mi.

II. Wheels and axles
  A. Both wheels and axles
    1. Penn Machine, Pittsburgh, Pa.
    2. Standard Steel, Burnham, Pa.
    3. United States Steel, Pittsburgh, Pa.
  B. Wheels only
    1. Abex Corp. New York, N.Y.
    2. Edgewater Steel, Oakmont, Pa.
    3. Griffin Wheel, Chicago, Ill.
    4. X-Tek, Cincinnati, Ohio
  C. Axles only
    1. Bethlehem Steel, Bethlehem, Pa.
    2. Standard Forging, East Chicago, Ind.
    3. Timken, Canton, Ohio

III. Truck Castings and Bolster
  A. Buckeye Steel Castings, Columbus, Ohio

IV. Coupler Assembly
  A. Complete assembly
    1. The Ohio Brass Co., Mansfield, Ohio
    2. Dellner-Schaku, Mt. Prospect, Ill.
    3. Walton Products, Broomall, Pa.
    4. Westington Airbrake Co. (WABCO), Wilmerding, Pa.
  B. Drawbar assembly only Dresser Industries Inc., Depew, N.Y.

V. Brakes
  A. New York Airbrake Co., Watertown, N.Y.
  B. Westinghouse Airbrake Co., (WABCO), Wilmerding, Pa.

VI. Propulsion System
  A. Produces system with either mechanical (CAM) or solid state controls.
    1. General Electric, Erie, Pa.
    2. Westinghouse Electric Corporation Buffalo, N.Y.
       West Mifflin, Pa.
  B. Produces only system with solid state controls only
    1. The Garrett Corporation, Torrence, Calif.

VII. Air Conditioning System
  A. Safety Electric, Wallingford, Conn.,
  B. The Trane Co., La Crosse, Wis.
  C. Air Control Industries (ACI) Irvine, Calif.
  D. Lear Sigler Energy Products, Santa Ana, Calif.

NOTE.—Appendices E and F are identical to information printed at pages 26–56 (Treasury Secretary's Decision)

APPENDIX G

BUDD'S REBUTTAL TO TREASURY'S DECISION AND FINDINGS

THE BUDD COMPANY

JAMES R. McNEAL, JR.
PRESIDENT AND CHIEF EXECUTIVE OFFICER

CORPORATE OFFICES
3155 WEST BIG BEAVER ROAD
BOX 2601
TROY, MICHIGAN 48084

July 16, 1982

82 JUL 21 AM 11:21
RECEIVED

The Honorable Donald T. Regan
Secretary of the Treasury
15th and Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

I am sorry that our failure to obtain an appointment with you necessitates use of a letter to put before you The Budd Company reaction and response to your statement to the press of July 13, relative to the order for 825 subway cars placed by the New York Metropolitan Transit Authority (MTA) with a Quebec firm, Bombardier, Inc. Regrettably, we find your statement to be misleading and inaccurate in many ways. It is unfortunate that both the statement and your determination were made without direct consultation with Budd or Budd's counsel since we feel that consultation would have clarified the facts and, therefore, resulted in a very different finding.

Among the inaccuracies in the statement are the following:

1. The MTA did not award a contract to Kawasaki Heavy Industries in late 1981 for the building of 325 rapid transit cars. The facts are: In November, 1981, the MTA opened negotiations on a contract for the building of 1150 rapid transit cars. Kawasaki Heavy Industries and The Budd Company both offered bids on this contract by January 5, 1982. Subsequently, the MTA split off 325 cars from that original offer to negotiate and on March 17 awarded a contract for their construction to Kawasaki Heavy Industries of Japan. One of the determining factors in that award was a buyer's credit issued to MTA by the Ministry of International Trade and Industry (MITA), a Japanese government entity, for 9% per annum financing. This financing was not below the internationally agreed upon levels applicable to Japan, and we are informed was not even substantially below commercial rates available in Japan. Under the circumstances, The Budd Company did not challenge this rate as non-competitive financing.

After the split off of these 325 cars, The Budd Company, Francorail, and Bombardier, Inc., of Canada, continued to negotiate with MTA for the remaining 825 cars.

2. In the third paragraph of your statement, you state that The Budd Company filed suit in the United States District Court for the Southern District of New York after MTA and Bombardier, Inc. had signed the contract for the construction of the 825 rapid transit subway cars on June 10, 1982. The facts are: The Budd Company filed suit on Tuesday, June 8, 1982, and a hearing was held on June 10 before Federal Judge Charles Brieant upon notice, and with the appearance of the MTA and its chairman. The purpose of the suit, and the outcome thereof, was the delay which allowed the Treasury Department the time to make a determination under Section 1912 of the Export-Import Bank Act, 12 U.S.C. 635 (a). This effect was achieved by the insertion in the contract between MTA and Bombardier, Inc. of a clause allowing the board of the MTA to re-open the contract if matching funds were made available to The Budd Company by the EXIM Bank on or before July 15, 1982. This clause was elaborated upon by a stipulation entered by the parties and approved by Judge Brieant. At the hearing in open court on this matter, counsel for the MTA stated that, if financing were made available to Budd, the MTA might actually have a better offer before it than it had from Bombardier, and characterized such an event as happy for Budd and, perhaps, happy for MTA. In affidavit to the Court, MTA Chairman Ravitch stated that the savings to MTA from the Canadian financing would be approximately $92 million, and that, therefore, Budd could not be awarded the contract, as such award would result in a loss to the taxpayers of the State of New York of that amount.

3. It appears to us that you have ignored the effect of the stipulation entered into by MTA, Budd and Bombardier in Federal Court in New York in making your decision. That stipulation provded that, if matching financing were made available to Budd by the EXIM Bank, MTA would re-open the negotiations in the matter.

THE BUDD COMPANY

> The question for your determination, therefore, was whether financing would be LIKELY to be a determining factor in the award of the contract. Both the statements of the MTA in Federal Court in New York and your determination indicate beyond a doubt that financing was a determining factor when MTA Chairman Ravitch made announcement in May of his recommendation of the contract award to Bombardier, Inc. and was a determining factor in the actual award of the contract to Bombardier, Inc. at a public hearing by the MTA Board on June 11, 1982, at which time Mr. Ravitch stated for the public record that all three bidders (Bombardier, Inc., The Budd Company, and Francorail) were fully qualified to build the 825 rapid transit cars.

Since the stipulation between the parties entered into and approved by Federal Judge Brieant contemplated complete reconsideration of new offers by Bombardier, Inc. and Budd, it is, in our view, highly inaccurate for you to determine what the result of said offers would be, both as regards design of the vehicles, using Japanese technology, or the New York State content which might be offered by Budd. (On the latter point, you will find that the record of the MTA hearing held on June 10, shows that Budd stated that its New York State content is 19% or approximately equal to that of Bombardier. As far as we know, that statement has not been refuted.) As for the supposed superiority of Japanese technology, it hardly seems likely that you or your advisors are competent to make any determination whatever on the question. It should have been left to the Board of the MTA who, as noted above, speaking through their Chairman, Mr. Ravitch, have stated that Budd was fully qualified to build the cars.

It is clear that the illegal non-competitive financing offered by Bombardier and the Canadian government was and is a determining factor in the award of this rapid transit car content. The statute does not require you to determine whether such non-competitive financing is the or the only determining factor. The reason such a finding is not required or contemplated is clearly that Congress would then require that you enter into just such questions of technology as you have in this case. Moreover, you have done so with no input from The Budd Company.

Your statement and the decision indicate that of the seven factors you listed as determining, the first and second are (1) availability of the subsidized Canadian financing and (2) the cost of said financing. Thus, your determination that the financing is not a determining factor, when you yourself list it as TWO DETERMINING FACTORS is a travesty of the statute enacted by Congress to help American industry, not to hurt it by casting aspersions on its technology.

THE BUDD COMPANY

Had you, or any of your delegates, made inquiry of The Budd Company before this determination was made, something which The Budd Company, both for itself and through counsel and other intermediaries requested repeatedly, your statements and findings might have been accurate at least on the facts of the matter. What you have done is to leave The Budd Company worse off than it would have been if it had not exercised its federal rights in this matter. If this is to be the interpretation of what Congress intended by enacting Section 1912, it seems certain that no United States company will ever try to use it again.

Some additional comments on the seven major factors cited in your statement:

Price of the cars. Budd maintains that its bid price for the total contract was $27 million lower than the next lowest bidder. After the prices were disclosed, however, Bombardier was permitted the opportunity to improve its bid and did improve it by nearly $5,000 per car. Budd was not offered this opportunity and instead its indicated bid price was increased by $23,337 per car with the notation that a price reduction of that amount would be available if the truck manufactured by Budd's Brazilian supplier passed the NYCTA qualification test. During negotiations, the technical people of the NYCTA agreed that the proposed Brazilian supplier was fully qualified to produce the proven truck design and the MTA bid award announcement of May 18 made no mention of any qualification of the Budd price, which was listed as $770,768.

Delivery schedules, including reliability of delivery. Budd's final delivery is scheduled to be October, 1986. Bombardier's final delivery is scheduled to be May, 1987. Apparently, the fact that Budd is running behind scheduled delivery on some current contracts is being used to bring into question Budd's reliability even though we have pointed out that the delay was caused by a 205-day strike of our brake supplier whose equipment, by the way, is specified by the NYCTA. It should be noted that the NYCTA has been equally hampered in obtaining parts for this same equipment for maintenance purposes. Neither you nor the MTA have any basis for a determination that Bombardier will be free of any strikes or factors beyond its control which might delay delivery. In addition, the contract contains a stiff penalty for late deliveries to which Budd will be subject if it fails to meet the schedule.

Quality of design, etc. We believe this point is answered with the statement by Mr. Ravitch that he considered Budd to be a fully qualified supplier.

THE BUDD COMPANY

Possible overdependence on a single supplier. It would seem to be only reasonable to assume that if the MTA had any legitimate concern on this point that Budd would have been disqualified at the outset, not after weeks of negotiations during which time Budd was continually encouraged by MTA to persist in its efforts to win the contract award.

In conclusion, we have been forced to the realization that our government pretends to be the friend of American business but in reality is anything but. President Reagan has said that the country should look to the private sector to be the engine to pull us out of recession, but the rest of the administration seems not to hear. Instead of help and encouragement, we are maligned for all manner of alleged inadequacies despite the fact that we have built 11,000 railway passenger cars of stainless steel over the past 50 years and Bombardier has yet to build any. Perhaps you do not place any importance on the fact that all other American producers of this type of equipment have withdrawn from the field. Budd is the only one left and you may be sure that this type of unfair competition may very well result in our following the others, leaving the market totally to the foreigners.

In consideration of all of the above, we are requesting timely response to the following requests:

1. That the report be amended to reflect the correct statements of fact outlined in this letter.

2. That this amended report be forwarded to the Department of Commerce and the International Trade Commission so that the correct facts are used in the countervailing duty petition case.

3. That you review your decision on the basis of the facts presented.

4. That you furnish me with a letter which I may forward to our Unions and employees correcting the inference that Budd's American workers are producing unsatisfactory quality as compared to the Canadians.

Sincerely,

J. R. McNeal, Jr.

ANSWERS TO ADDITIONAL WRITTEN QUESTIONS OF SENATOR HEINZ FROM DONALD DeKIEFFER, GENERAL COUNSEL, UNITED STATES TRADE REPRESENTATIVE

Q - 1. Aren't we handicapping our efforts to promote free international markets when we allow major international sales, in our own domestic economy and by a government entity, to be determined on the basis of official subsidies?

A. It is precisely because the United States is dedicated to free and fair international trade that this Administration has been aggressively combatting foreign governmental subsidies injuring domestic producers. Currently, there are more antidumping and countervailing duty cases being processed in the Reagan Adminstration than at any time since the passage of these laws in 1921 and 1896 respectively. Additionally, the United States was instrumental in promoting and successfully negotiating the General Agreement on Tariffs and Trade (GATT), the International Antidumping Code, and most recently the Subsidies Code under the auspices of the GATT. When combined with the more than eight different mechanisms Congress has fashioned to remedy foreign practices affecting our Commerce, it is clear this administration will aggressively oppose these types of subsidies.

Q - 2. How long will the American free market last if we allow foreign companies to win major sales here because of the subsidized financing that they have obtained from their government?

A. The American free market could not function effectively if foreign companies were allowed to win major contracts in the United States because of an artificial advantage obtained by subsidized financing from their government. Two GATT agreements signed in 1979, the Agreement on Subsidies and Countervailing

Measures and the Agreement on Trade in Civil Aircraft, state clearly that governmental assistance to foster exports should not adversely affect the trade interests of other countries. Additionally, the OECD Arrangement on Guidelines for Officially Supported Export Credits set firm, though less than optimal standards regarding export financing. The U.S. neither recognizes exceptions from this OECD Arrangement nor does it believe that any international agreement compels us to ignore subsidies distorting domestic trade.

Q - 3. How are we promoting a free market system when the producer with the least expensive quality product loses sales to the less efficient but highly subsidized competitor?

A. Although price is not the sole determinent of supply and demand in a free market system, the U.S. government is determined that, all other factors being equal, domestic producers will not lose sales to subsidized competitors.

Q - 4. What kind of signals are we showing to the foreign investor when we are not willing to defend the sanctity of international agreements when they are violated in our own house? What kind of confidence can he have about the long-term advisability of investing in U.S. industrial production?

A. The Reagan Administration has clearly and forcefully signalled foreign investors that the U.S. will continue to prosecute violations of international agreements occurring within this country. In addition to the dispute detailed above, within the past year, USTR initiated ten 301 investigations accounting for nearly one-third of the total investigations initiated since 1975. Four of the cases concern European Community agricultural subsidy practices, five deal with domestic subsidies on specialty steel, and one concerns Argentine export restrictions on

cattlehides. Moreover, USTR is reviewing three new petitions, the Canadian government's export credit financing for subway cars, their duty remission scheme for front end-loaders, and a petition alleging that the Government of Belgium provides subsidies on the production of stainless steel sheet, strip, plate, and wire rod. Additional action also continues on citrus and wheat flour.

Any investor, then, foreign or domestic, can be confident that his interests in U.S. industrial production will be protected to the fullest extent possible under our law and that of numerous international agreements. Although the above 12 cases demonstrate a strong U.S. commitment to fair international trade, other actions by our government also support this commitment. First, USTR is reviewing the petition of Houdaille Industries to suspend the investment tax credit for Japanese made numerically controlled machining centers and punching machines. The petition alleges that the Japanese government formed a cartel to shield its industry from outside competition and is the first time an investigation of this sort has been undertaken. If the allegations prove true, we will be sending a strong warning to other nations considering such anti-competitive measures. Similarly, the mere fact that USTR is investigating this type of dispute indicates that the U.S. will be much less likely than in the past to hide under the rubric of "comity" when faced with international antitrust violations affecting domestic commerce.

Q - 5. It appears that the Canadians offered the low financing in order to defend their exporters against the subsidized financing of the French competitor. If it is important to the Canadians to defend their export markets against official export

credits, is it any less important for the United States to defend its domestic markets against foreign predatory financing?

A. The Canadian action was in violation of their international obligations and should not serve as an excuse or justification for United States actions in violation of our own trade agreements. Nevertheless, the United States has and will continue to defend its domestic markets against foreign predatory pricing in order to maintain a free and fair marketplace, thus ensuring, to the extent allowed by our law, an efficient allocation of goods and services. Towards these goals, Congress and the Executive Branch have undertaken the numerous investigations and administrative actions previously mentioned--all designed to attack price discrimination and unfair subsidization of private enterprise by requiring products which enter our market to fully reflect their cost of production and to be free of discriminatory pricing.

Q - 6. Are there specific legislative proposals, either within the areas of trade laws or our tax code, which you think would be useful in dealing with the problem of subsidized export credit within our domestic market? It would be particularly useful to the Committee if you could supply such proposals after confering with other members of the Administration who deal with our trade policy.

A. We do not have any legislative proposals at this time that specifically attack the problem of subsidized export credit within our domestic market. The Administration's reciprocity bill, we feel, will be an important step in expanding the effectiveness of Section 301 in dealing with this and other unfair trade practices.

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